

Labor's Minimum Wage Exemption: Unions as the “Low-Cost” Option

2016 UPDATE



U.S. CHAMBER OF COMMERCE
Workforce Freedom Initiative



U.S. CHAMBER OF COMMERCE

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I. Introduction

Raising the minimum wage has been a perennial topic of debate in Congress. When the federal minimum wage was first introduced in 1938, it was set at 25 cents per hour, which is equal to \$4.22 in 2016 dollars.¹ It has since risen to \$7.25 per hour, with the last increase based on legislation passed in 2007.² There are now demands to increase the minimum wage further, and both Democratic candidates for president have expressed support for \$15 per hour. Unions and their affiliated worker centers are clamoring for states and cities to pass a \$15 per hour wage on their own and have convinced New York, California, and a number of cities to do so already. More often than not, these groups assert that raising the minimum wage will actually *benefit* businesses by reducing turnover and putting more money in the hands of low-wage workers who will spend it.

By and large, the business community opposes increasing the minimum wage because of increased labor costs that, according to extensive economic literature, can reduce employment opportunities. In fact, the nonpartisan Congressional Budget Office wrote in a recent paper that a minimum wage increase of the scale contemplated by President Obama (\$10.10 per hour) could cost 500,000 jobs.³ Others note that the minimum wage itself does not include the real costs to employers — for example, the current \$7.25 per hour federal minimum wage costs an employer about \$10.30 per hour when taxes and mandatory benefit costs are factored in.⁴

While the Fair Labor Standards Act (FLSA) sets the national minimum wage, many states, counties, and cities have chosen to adopt their own higher minimum wage rate. As of January 2016, 29 states and the District

¹ Calculated using the DOL Bureau of Labor Statistics Consumer Price Index Inflation Calculator, available at www.bls.gov/data/inflation_calculator.htm.

² The Fair Minimum Wage Act of 2007 raised the minimum wage to its current level in three increments, with the last increase to \$7.25 effective on July 24, 2009. See DOL website, www.dol.gov/whd/minwage/chart.htm. Last visited October 27, 2014. See also http://en.wikipedia.org/wiki/Fair_Minimum_Wage_Act_of_2007. Last visited October 27, 2014.

³ The CBO summary and report can be found at www.cbo.gov/publication/44995. Last visited October 27, 2014.

⁴ Sherk and Patrick Tyrrell, *Obamacare and a Minimum Wage Hike Pricing Many Unskilled Workers out of Their Jobs*, The Heritage Foundation, November 22, 2013.

of Columbia had rates higher than the federal standard, as did cities such as San Francisco, Los Angeles, and Seattle.⁵

However, not all minimum wage increases come in the same form. Some local ordinances in particular include an exemption for employers that enter into a collective bargaining agreement with a union. This “escape clause” is often designed to encourage unionization by making a labor union the potential “low-cost” alternative to new wage mandates, and it raises serious questions about whom these minimum wage laws are actually intended to benefit.

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This paper will examine the background and content of local minimum wage laws that include a union exemption. It does not examine the economic merits, or lack thereof, of increases in the minimum wage. Rather, it is intended to encourage the business community, the media, and the public to more closely examine the content of proposed minimum wage laws and the true impetus behind their passage. As with the particular laws featured in this study, there may be more than meets the eye.

II. The Union “Escape Clause”

As described in this report, many of the campaigns to increase the minimum wage are led by organized labor or by groups funded by unions. As such, it may be more than just a coincidence that the union escape clauses included in many minimum wage laws are remarkably similar. The typical clause reads:

All or any portion of the applicable requirements of this

⁵ U.S. Department of Labor, Wage and Hour Division, Minimum Wage Laws in the States at <https://www.dol.gov/whd/minwage/america.htm>, see also Time Magazine minimum wage graphic at <http://time.com/3890984/cities-highest-minimum-wage-map/>.

Chapter shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.⁶
(emphasis added)

Given this language, nonunionized employers are presented with a dilemma. They can either shoulder increased labor costs or seek to make an accommodation with a union.

Unions may agree to lower wages or benefits in exchange for things that have nothing to do with the “pot of money,” such as organizing concessions at additional locations of the same employer.

Organized labor’s hope is that they will choose to unionize and that they can be convinced to do so under a neutrality and/or card check agreement to significantly speed up that process. A neutrality agreement typically prohibits an employer from speaking negatively about a union during an organizing campaign and sometimes will allow unions to gain access to the employer’s property.

Under card check, an employer agrees to recognize a union based simply on employees’ signatures on authorization cards rather than through a secret ballot election. Both concessions are highly prized by organized labor.

Unions argue the escape clause allows them flexibility in bargaining, permitting them to sacrifice higher minimum wages for some other provision the union perceives as valuable. As one union official put it, “[o]ur members . . . can bargain for how the pot of money is spent.”⁷

Perhaps, but every employer subject to a mandated minimum wage increase could make the same case for flexibility, in addition to arguing that forgone profits could be used to expand a business and create additional jobs. And, of course, unions may agree to lower wages or

⁶ San Francisco Administrative Code, §12R8.

⁷ KIROTV, *15Now Decides to Pursue Signatures for Charter Amendment*, April 27, 2014. See www.kirotv.com/news/news/15now-decides-pursue-signatures-charter-amendment/nfjPw/. Last visited October 27, 2014.

benefits in exchange for things that have nothing to do with the “pot of money,” such as organizing concessions at additional locations of the same employer. Further undermining the case for the exemption is the fact that most minimum wage laws do not include a union escape clause, and the federal minimum wage law has never had such a carve-out.

In localities that have included a union escape clause, workers may or may not get the increased minimum wage they were promised. For example, in Los Angeles, unionized hotels were granted an exemption under the city’s hotel-specific wage law, and the influential hotel workers union UNITE-HERE negotiated a contract that included wages for its members that were just two-thirds of those at non-unionized hotels nearby. One worker summed up her frustrations by asking “Why is it more of a benefit to be in a union? The union isn’t really doing anything for us. It’s completely upside-down. They want to pay us less than the minimum wage.” Another union member was told “to look at the bigger picture. This is going to make all the hotels go union.”⁸

Employers who choose unionization, depending on what can be negotiated, may gain some control over their labor costs, but will likely have to grant other concessions to a union. Thus, there is really only one unambiguous winner from the exemption— the union itself. If an employer signs a contract, the union can expect to gain new members, new dues revenue, increased political clout, and, most likely, increased payments into its pension fund.

This, at least, is the theory. A key question is whether the union escape clause is achieving the intended results from organized labor’s perspective. Real-world correlations suggest that it is.

UNITE-HERE Local 11, which represents hotel workers in Los Angeles, California, saw its membership and revenues jump after the city included a union escape clause in a minimum wage hike on hotels. Local 11’s membership increased from 13,626 in 2007 to 20,615 in 2016,⁹ while its

⁸ Peter Jamison, “Outrage after big labor crafts law paying their members less than non-union workers,” *Los Angeles Times*, April 9, 2016.

⁹ U.S. Department of Labor, Annual LM-2 Filings by UNITE-HERE Local 11.

revenue increased from approximately \$7.5 million per year to more than \$18.2 million.¹⁰ In Long Beach, California (also covered by Local 11), two hotels that had long been the target of organizing campaigns finally capitulated after voters passed a minimum wage ballot measure that included a union exemption.¹¹ When San Francisco, California, passed a citywide minimum wage ordinance with a union exemption in late 2003, membership in UNITE-HERE Local 2 rose from 8,000 in 2004 to more than 13,000 in 2016.¹² Notably, this increase occurred as union density nationally declined from 12.9% of the workforce in 2003 to 11.1% in 2016.¹³

The following section of this report will highlight specific cities where the union escape clause has been passed. Many, but not all, are located on the West Coast, where unions continue to wield substantial political power.¹⁴ Given the clear benefits to unions, however, the escape clause is unlikely to stay contained and will undoubtedly feature in other minimum wage debates nationwide.

III. Specific Ordinances

SeaTac's Living-Wage Law

The City of SeaTac, Washington, is a community that exists primarily to service Seattle-Tacoma International Airport. Its 2013 local “living-wage” ballot initiative, Proposition 1, was aimed at increasing wages for hospitality and transportation workers. It passed by just a 77-vote margin out

Not all workers may ultimately see these new wages and benefits, however, since Proposition 1 also included a union escape clause.

¹⁰ *Ibid.*

¹¹ The two hotels are the Hyatt Regency Long Beach and Hyatt The Pike Long Beach. See www.prsstelegram.com/general-news/20130901/long-beach-may-be-setting-for-further-push-on-living-wage-laws. Last visited October 27, 2014.

¹² U.S. Department of Labor, Annual LM-2 Filings by UNITE-HERE Local 2.

¹³ U.S. Department of Labor, Bureau of Labor Statistics, historical data. See www.bls.gov/.

¹⁴ Note that since this report was first published, California passed a statewide \$15 minimum wage. Once fully implemented in 2023, the law will supersede local ordinances, including those with union exemptions. However, should a local government raise its wage above the state minimum, those union carve outs can once again come into play. In addition, during the implementation phase of the statewide minimum wage, these localities may have a minimum wage under their own ordinance that is higher than the state wage.

of 6,003 votes cast.¹⁵ With its passage, SeaTac established the nation's then-highest minimum wage rate of \$15 per hour.¹⁶ Proposition 1 also included an annual inflation adjustment, up to six-and-a-half days of paid sick leave, and required employers who won airport-related hospitality, transportation, and cleaning service contracts to give hiring preference to the employees of the contractors they replaced.¹⁷ Not all workers may ultimately see these new wages and benefits, however, since Proposition 1 also included a union escape clause.¹⁸

In total, funds spent to support and oppose Proposition 1 exceeded \$2.2 million. This was unprecedented for a city with only 12,100 registered voters, exceeding \$370 per vote cast.¹⁹ Supporters of Proposition 1 spent more than \$1.7 million, with union spending accounting for 98.4% of that amount. The Service Employees International Union (SEIU) was the measure's primary supporter, but others included the Teamsters, UNITE-HERE, the United Food and Commercial Workers, the AFL-CIO, and the Washington Education Association.²⁰

The \$15 per hour rate mandated by Proposition 1 is more than double the federal minimum wage of \$7.25 per hour and exceeds the Washington State rate by nearly 60%.²¹ Employers covered by Proposition 1 included airport concessionaires, contractors, and nearby hotels and car rental companies that service the SeaTac airport.

¹⁵ Data obtained from King County Elections website, available at <https://electionsdata.kingcounty.gov>. Last visited October 27, 2014.

¹⁶ Businesses with fewer than 10 employees are exempted.

¹⁷ Businesses with fewer than 10 employees are exempted.

¹⁸ SeaTac Municipal Code, Chapter 7.45.

¹⁹ Calculated from the Public Disclosure Commission records, available at www.pdc.wa.gov. Last visited October 27, 2014. See also Seattle Times, *\$94 per Voter, and Counting: SeaTac Wage Measure Draws Big Bucks*, October 26, 2013. By comparison, the previous spending record for a ballot initiative campaign was less than \$17 per vote, set in 2011 over a state liquor sales measure.

²⁰ Public Disclosure Commission records, available at www.pdc.wa.gov. Last visited October 27, 2014.

²¹ The Washington State minimum wage rate was raised to \$9.47 per hour, effective January 1, 2016.

San Francisco's Minimum Wage Law

On January 1, 2013, San Francisco's minimum wage rate climbed to \$10.55 per hour, which at the time was the highest rate in the country.²² This rate was based on a 2003 voter-approved ordinance that set the minimum wage at \$8.50 per hour and tied its annual increase to the regional rate of inflation.²³ San Francisco held the number one position nationally until November 2013, when, as discussed above, SeaTac raised its minimum wage to \$15 per hour.

For the first two years San Francisco's ordinance was in effect, 2004 and 2005, the law allowed an exemption and a reduction, respectively, in the wage rate for nonprofits and small businesses.

Since 2006, however, these businesses have shouldered the same burden as larger for-profit entities. Unionized employers with collective bargaining agreements that waive the provisions were also exempted from the minimum wage law, although, unlike the other carve-outs, that exemption did *not* expire and remains in effect today.

Unsatisfied with the 2003 ordinance, unions such as SEIU Local 1021 engineered a successful November 2014 ballot initiative, the Minimum Wage Act of 2014, that asked the voters to raise the minimum wage to \$15 per hour by July 2017 for employers with more than 100 workers, and by July 2018 for smaller employers. The initiative included no tip credit, nor a credit for employer-provided health care. Not surprisingly, the Minimum Wage Act of 2014 left the union escape clause unchanged.²⁴

²² Robin Wilkey, *San Francisco Minimum Wage Increase Makes It Highest in the Nation*, Huffington Post, January 2, 2013.

²³ San Francisco's minimum wage rate was increased to \$10.74 per hour, effective January 1, 2014. See <http://sfgsa.org/index.aspx?page=411>. Last visited October 27, 2014.

²⁴ See http://sfgov2.org/ftp/uploadedfiles/elections/candidates/Jun2014/June2014_MinimumWageAct.pdf. Last visited October 27, 2014.

Oakland's Minimum Wage Ballot Measure

In November 2014, voters in Oakland, California, approved a minimum wage ballot initiative. It establishes a minimum wage rate of \$12.25 per hour beginning on March 2, 2015. The rate then increases each year on January 1 based on a cost-of-living adjustment.²⁵ Employers in Oakland are also now required to provide sick leave to employees, which can be capped at 40 hours for employees of small businesses and 72 hours for other employers. The ballot measure provides for enforcement either by the city or by individual employee lawsuits. Although individual employees and employers cannot seek a waiver, any and all terms of the measure can be waived under a union escape clause included in Section 5.92.050 (B) of the Ballot Measure Submittal Form.²⁶

San Jose's Minimum Wage Law

The city of San Jose, California, approved a 2012 ballot measure that raised its minimum wage to \$10 per hour. Like San Francisco, this increased wage rate applies to tipped and non-tipped employees alike, and all employers in the city are required to post an official notice that advises employees of their rights under the law, including the right to file a civil lawsuit against their employer.²⁷

In addition to the increased wages, the measure contains an annual cost-of-living increase tied to the regional consumer price index. Based on the cost-of-living adjustment, the city's minimum wage rate increased to \$10.15 per hour on January 1, 2014. The law also includes a union escape clause.²⁸

Richmond's Minimum Wage Law

In Richmond, California, labor leaders were able to push through a similar minimum wage ordinance, but with slightly different results. The city already had a "living wage" ordinance on the books, which set

²⁵ Ballot Measure Submittal Form, City of Oakland, August 2014.

²⁶ *Ibid.*

²⁷ See www.sanjoseca.gov/DocumentCenter/View/24367. Last visited October 27, 2014.

²⁸ See <http://www3.sanjoseca.gov/clerk/minwage/minwageord.pdf>. Last visited October 27, 2014.

minimum wages for employers in which the city asserts a proprietary interest (e.g., city contractors, lessees, and recipients of city financial aid) The living wage ordinance extends to subcontractors as well. Minimum wage levels for these workers are set at \$11.42 per hour if the employer provides a medical benefits plan and \$12.92 per hour if they do not. Like similar laws, employees have a private civil right of action against an employer who violates these laws, in addition to enforcement by the city. That is, unless the employer is party to a collective bargaining agreement under the law’s union escape clause.²⁹

In June 2014, Richmond’s city council voted unanimously to phase in an increase to \$13 per hour by 2018 for all workers, with an annual increase linked to inflation. This ordinance also included the typical union exemption. Surprisingly, it included two other exemptions that were opposed by labor unions. The first provides an exemption for businesses that pay less than 800 hours of employee wages over a two-week period. The second allows businesses to pay an intermediate wage, which is halfway between the California state minimum wage and the city’s minimum wage, if the business derives more than 50% of its income from transactions where the point of sale is outside the city limits.³⁰

Los Angeles Hotels in the “Airport Hospitality Enhancement Zone”

The city of Los Angeles, California, has its own unique issues related to the minimum wage. The minimum wage and living wage debate for hotels located near the Los Angeles Airport (LAX) in particular has been a contentious one. On November 22, 2006, the Los Angeles City Council adopted an ordinance — with a union escape clause — that set elevated minimum wage levels for certain hotel workers employed along the Century Boulevard business corridor (Century Corridor) that abuts LAX. At that time, the state minimum wage was \$6.75 per hour.³¹

²⁹ City of Richmond, City Ordinances, Chapter 2.60.

³⁰ Robert Rogers, *Richmond Approves \$13 Minimum Wage, Potentially State’s Highest*, Contra Costa Times, June 4, 2014.

³¹ State of California Department of Industrial Relations, *History of California Minimum Wage*, available at www.dir.ca.gov/iwc/minimumwagehistory.htm. Last visited October 27, 2014.

The city council contended that, since the area hotels benefited financially from the heavy airport passenger traffic, the benefits should be shared with the local area hotel workers. Unlike the Richmond ordinance discussed above, the City of Los Angeles did not articulate any specific proprietary interest in the affected hotels to justify its action. For example, the ordinance did not require the affected hotels to have a contract or lease with the city in order to be subject to the increased wage requirements.

The ordinance required 12 hotels in the Century Corridor with 50 or more guest rooms to pay workers at least \$9.39 per hour if they received health benefits and at least \$10.64 per hour if they did not.³²

Two other labor-backed ordinances were also passed at the same time.³³

One requires the purchaser of a covered hotel to provide written employment offers and to retain each incumbent hotel worker for at least 90 days after acquiring the property, with the discharge of any worker during the 90 days permitted only for “cause.” The second ordinance requires covered hotels that charge customers a “service charge” for

banquets or other large groups to pass the entire service charge on to workers who actually perform the services. These ordinances, like the wage ordinance, also contain the same union escape clause, as well as a provision allowing attorneys’ fees and litigation costs to be awarded to a worker who successfully brings an action against the employer for violations. Unsurprisingly, the three ordinances were heavily supported by local unions, particularly UNITE-HERE and a labor-backed worker center, the Los Angeles Alliance for a New Economy (LAANE).

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³² LA City Council Ordinance No. 178082, titled “Hotel Worker Living Wage Ordinance.”

³³ LA City Council Ordinance No. 178083, titled “Hotel Workers Retention Ordinance,” and LA City Council Ordinance No. 178084, titled “Hotel Service Charge Reform Ordinance.”

The wage ordinance's special minimum wage requirements were successfully opposed by a group of affected hotel operators, individual taxpayers, and other interested parties in the form of a petition containing 103,679 signatures. On January 31, 2007, the Los Angeles City Council repealed this wage ordinance; however, it subsequently passed another ordinance³⁴ that set minimum wage requirements for hotel workers identical to those found in the first ordinance, but mandated its implementation in phases. After considerable litigation, during which UNITE-HERE Local 11 was allowed to join the lawsuit as a "real party in interest," the state supreme court allowed the second ordinance to go into effect.

The president of UNITE-HERE Local 11 suggested the union escape clause would have some impact on organizing, saying, "I wouldn't even say it's an incentive. It just perhaps will cause them [businesses] to be less resistant to unionization."³⁵

Indeed, within two years of the ordinance's passage, four hotels in the Century Corridor targeted by UNITE-HERE had agreed to unionize.³⁶ From UNITE-HERE's perspective, the law achieved its intended effect. The effect was,

however, less positive for many workers. In fact, a study commissioned by the city council found that, while hotel employment had increased by 12% in Los Angeles County overall, it decreased by 10% in the hotels covered by the ordinance.³⁷

Within two years of the ordinance's passage, four hotels in the Century Corridor targeted by UNITE-HERE had agreed to unionize.

³⁴ LA City Council Ordinance No. 178432, titled "Airport Hospitality Enhancement Zone Ordinance."

³⁵ Peter Jamison, *Outrage after big labor crafts law paying their members less than non-union workers*, Los Angeles Times; April 9, 2016; available at <http://www.latimes.com/local/cityhall/la-me-union-minimum-wage-20160410-story.html>. Last visited May 2, 2016.

³⁶ *Transforming the Gateway to L.A.: The Economic Benefits of a Sustainable Tourism Model*, LAANE, December 2, 2009. The four hotels were the Sheraton Gateway, the Westin LAX, the Four Points LAX, and the Radisson LAX.

³⁷ Christopher Thornberg, *How to Kill Hotel Jobs in L.A.*, Los Angeles Times, September 29, 2014, available at www.latimes.com/opinion/la-oe-thornberg-hotel-minimum-wage-20140930-story.html. Last visited October 27, 2014.

Los Angeles Citywide Hotel Worker Minimum Wage

Several years later, Los Angeles took further steps to expand its minimum wage ordinance. On October 1, 2014, by a vote of 12 to 3, the Los Angeles City Council approved a citywide minimum wage of \$15.37 per hour for workers in hotels with at least 150 rooms.³⁸ A coalition supporting the ordinance included several large unions. Opponents noted the typical union escape clause:

Hotel industry representatives call the measure discriminatory because it does not include workers citywide, and say it was a strategic move by labor groups to encourage more hotels to unionize their workers. Under the ordinance, hotels with a unionized workforce can be exempted from paying the \$15.37 hourly wage if workers agree in their contract to relinquish that opportunity.³⁹

Authors of a study commissioned by the city council to examine the impact of a \$15.37 minimum wage raised significant concerns about job losses.⁴⁰ However, the council's vote was scheduled just one day after the report was due, meaning it was unlikely to have been read or properly considered. For its part, the Hotel Association of Los Angeles estimates that the new law will cause 1,450 job losses at the 40 affected hotels.⁴¹

Long Beach's Measure N

Measure N was a so-called living wage ballot measure that targeted the largest hotels in Long Beach, California. It was approved by city residents in November 2012. Through the ballot measure, proponents of the law were able to bypass the divided city council. Measure N requires targeted hotels to pay an inflated minimum wage to all employees, including

³⁸ LA City Council Ordinance No. 183241, titled "Citywide Hotel Worker Minimum Wage Ordinance."

³⁹ Soumya Karlamangla, *\$15.37 Minimum Wage Heads to Garcetti's Desk as Hotel Group Complains*, Los Angeles Times, October 1, 2014, available at <http://www.latimes.com/local/lanow/la-me-ln-hotel-wage-public-records-20141001-story.html>. Last visited 11/18/14.

⁴⁰ Thornberg, *How to Kill Hotel Jobs in L.A.*

⁴¹ See Karlamangla, *\$15.37 Minimum Wage Heads to Garcetti's Desk as Hotel Group Complains*.

subcontractors and tip-based employees, plus a 2% minimum raise each year regardless of employee performance or other economic factors.⁴²

With a threshold jurisdiction of hotels with 100 or more guest rooms, Measure N was meant to affect the city's 16 largest hotels (out of approximately 50 total hotels), which employed approximately 2,000 workers.⁴³ For these hotels, the hourly rate paid to hotel workers, including subcontractors and tip-based employees, was raised to \$13.00 per hour — nearly double the federal minimum wage of \$7.25 per hour (and significantly higher than the state minimum wage of \$8.00 per hour in existence at that time).⁴⁴ The law also requires that the special minimum wage “shall be adjusted by the amount of increases in the federal minimum wage over the amount in effect on December 31, 2011, or, if greater, by the cumulative increase in the cost of living.”⁴⁵ If the Consumer Price Index (CPI) increases by more than 2%, workers automatically receive that percentage pay raise, but if the CPI does not grow by 2%, workers still receive the 2% raise automatically. Further, workers are mandated to receive wage increases even if the economy or the city's tourism and convention revenues are negative in a given year.⁴⁶

Measure N prohibits wage offsets for service charges, tips, gratuities, and commissions. Affected hotels are required to remit all tips and service charges paid by customers in full to the employees in addition to the \$13.00 wage rate.⁴⁷ Measure N also requires that each worker receive paid sick leave and personal time, which must be paid to the employee in a lump sum if unused at the end of the year.

Measure N increases the litigation risk, and potentially the insurance

⁴² Robert E. Shannon, City Attorney, City of Long Beach, *Analysis of Measure N*, August 16, 2012. See www.longbeach.gov/civica/filebank/blobdload.asp?BlobID=34811. Last visited October 27, 2014.

⁴³ Two additional hotels, the Hotel Maya and the Queen Mary hotel, would have been included, but they are already unionized. See Long Beach Business Journal, *Measure N: Voters Approve \$13 Wage and Benefits for Long Beach Hotel Workers*, November 20, 2012.

⁴⁴ In 2013, California passed a measure that raised the current \$8 minimum wage to \$9 per hour on July 1, 2014, and to \$10 on January 1, 2016.

⁴⁵ See Shannon, *Analysis of Measure N*.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

costs, for the subject hotels. This results from the ordinance passed by the city council in response to the ballot initiative, which allows any hotel worker who claims a violation to bring a class action against the employer seeking compensatory and punitive damages, injunctions, reinstatement, and, if they prevail, attorney's fees and court costs.⁴⁸

Measure N also includes a typical union escape clause, in this case not just from the minimum wage requirement, but also from the automatic cost-of-living increases, paid sick time, and other provisions of the law.⁴⁹ During the campaign over Measure N, critics called the exemption a blatant attempt to unionize downtown hotels.⁵⁰

Measure N also includes a typical union escape clause, in this case not just from the minimum wage requirement, but also from the automatic cost-of-living increases, paid sick time, and other provisions of the law. During the campaign over Measure N, critics called the exemption a blatant attempt to unionize downtown hotels.

Interestingly, while a hotel worker (or union member) can bring an individual or class action against the employer for a violation of the ordinance, the City of Long Beach “has no legal authority to enforce the requirements of Measure N as it was written,” according to City Attorney Robert Shannon.⁵¹ This monopoly on enforcement gives labor unions a key tool to pressure employers into offering valuable concessions during organizing drives or collective bargaining sessions.

According to publicly available campaign reports,⁵² the supporters of

⁴⁸ *Ibid.*

⁴⁹ *Ibid.* See also *Resolutions for Minimum Wages and Minimum Sick Leave Payable to Hotel Workers* available at www.longbeach.gov/civica/filebank/blobload.asp?BlobID=34813. Last visited October 27, 2014.

⁵⁰ Eric Bradley, *Long Beach Hotel Workers Want Measure N Followed*, Long Beach Press-Telegram, December 11, 2012.

⁵¹ *Ibid.*

⁵² Long Beach City Clerk Filings Page, Search by Ballot Item, available at http://campaigndocs.longbeach.gov/CampaignDocs_Web_Public_Access/. Last visited October 27, 2014.

Measure N received 50% more funds than those opposing it. The *Yes on Measure N — Long Beach Committee for a Living Wage, A Coalition of Working Men and Women and Social Justice Organization, Sponsored by UNITE-HERE Local 11* received nearly \$757,000 in contributions. According to news reports, the majority of supporting funds were raised from the Los Angeles County Federation of Labor, AFL-CIO.⁵³

In addition to financial resources, six members of the nine-seat city council signed a support letter for the supporting campaign committee. These signatories comprised five council members and the vice mayor. The letter was also signed by a U.S. representative, a state senator, and three assembly members from area cities.⁵⁴

The *No on N Committee* received just over \$504,000 in contributions and had the support of hotels and the Long Beach Area Chamber of Commerce, which called the measure “a power grab by Los Angeles unions who have long sought to organize in Long Beach.”⁵⁵

Opponents of Measure N correctly raised the core issue that the ballot initiative “[c]reates a loophole to allow businesses to pay less than a minimum wage if they agree to become a union hotel.”⁵⁶ They also argued that Measure N would cost jobs and reduce hotel inventory. As events have shown, they were largely on target.

Following enactment of Measure N, at least two hotels, the Hyatt Regency Long Beach and Hyatt The Pike Long Beach, were finally unionized by UNITE-HERE.

First, following enactment of Measure N, at least two hotels, the

⁵³ Eric Bradley, *Measure N: Long Beach Hotel Wage Measure Passes*, Long Beach Press-Telegram, November 7, 2012.

⁵⁴ Eric Bradley, *Measure N: Majority of Long Beach Council Members Back Hotel Wage Increase*, Long Beach Press-Telegram, October 30, 2012.

⁵⁵ *Ibid.* See also Long Beach City Clerk Filings Page.

⁵⁶ Los Angeles County Registrar-Recorder, *Argument Against Measure N*, August 17, 2012, available at www.longbeach.gov/civica/filebank/blobdload.asp?BlobID=34810. Last visited October 27, 2014.

Hyatt Regency Long Beach and Hyatt The Pike Long Beach, were finally unionized by UNITE-HERE. As the media noted, the organizing campaigns at these hotels had gone on for almost 10 years: “For nearly a decade, UNITE-HERE supporters have boycotted the hotel, filed lawsuits and pushed for a labor peace agreement, a controversial measure that would have required hotels on city-owned land to sign a contract designed to prevent labor conflict such as strikes.”⁵⁷ Measure N finally brought those campaigns to a successful conclusion for UNITE-HERE. Long Beach Area Chamber of Commerce President Randy Gordon commented that these two hotels were the prize for the union’s efforts in supporting Measure N and described the new law as a “backdoor ploy to unionize hotels here that had been on the hit list and the wish list of the unions here for many years.”⁵⁸

UNITE-HERE had always claimed that it was “engaged in a campaign to raise living standards and working conditions for thousands of hospitality workers in Long Beach, and that the ballot measure was not about gaining new members.”⁵⁹ However, as set forth in an editorial by the *Long Beach Press-Telegram*:

It didn’t take long for Measure N to bear the intended fruit of its passage in November. It took just six months for the so-called living wage for hotel workers measure to push two of Long Beach’s largest hotels to cry uncle . . .

Of course, unionization was the real goal of the measure all along. It was backed by the union advocacy group Los Angeles Alliance for a New Economy, or LAANE, and the downtown Los Angeles-based hospitality workers union UNITE-HERE Local 11, which had been battling the Hyatt for years to force it to unionize.

⁵⁷ Kelsey Duckett, *Long Beach Hyatt Hotel Workers Plan to Unionize with Unite Here Local 11*, Long Beach Press-Telegram, April 7, 2013.

⁵⁸ Andrew Edwards, *Long Beach May Be Setting for Further Push on Living Wage Laws*, Long Beach Press-Telegram, September 1, 2013.

⁵⁹ UNITE-HERE Local 11 website, available at <http://unitehere11.org/organizing-for-a-voice>. Last visited October 27, 2014.

The idea was to get voters to force the private hotels into a no-win situation: They could either negotiate with unions over pay and benefits, and maybe come up with a deal they could live with, or take the guaranteed pay and raises voters imposed. . . .

It's not clear how well Hyatt workers will benefit from this deal. After union dues are deducted from their paychecks, they may not see much of a raise. In the end, the city's hotel workers are just collateral damage in a battle between Long Beach hotels and L.A. unions looking to move into the city.⁶⁰

Second, a number of affected hotels responded by remodeling to combine multiple rooms into larger suites in order to get below the 100 room threshold.⁶¹ Other hotels got below 100 rooms by shuttering rooms or even whole floors, simultaneously laying off hotel staff members. Others increased room rates and amenity costs, passing on the burden to the customer.⁶² According to the *Long Beach Press-Telegram*:

Hotel Current . . . has downsized from 143 rooms to 99 rooms, according to hotel management, though they said the change had already been planned before Measure N's passage.⁶³

Another hotel, the Best Western Golden Sails . . . told its employees in a Dec. 10 memo, which was obtained by the

⁶⁰ Long Beach Press-Telegram, *Long Beach Hotel Measure's True Intention Comes to Pass*: Editorial, April 10, 2013.

⁶¹ Contra Costa Times, *Long Beach Best Western Staff to Be Laid off as Measure N Date Nears*, December 14, 2012, available at www.contracostatimes.com/california/ci_22196466/long-beach-best-western-staff-be-laid-off. Last visited October 27, 2014.

⁶² Bradley, *Long Beach Hotel Workers Want Measure N Followed*. See also Kelsey Duckett, *As Long Beach Measure N Goes into Effect, Hotels Consider Hiking Rates, Cutting Rooms*, Long Beach Press-Telegram, December 20, 2012.

⁶³ The Hotel Current downsized from 143 rooms to 99 renovated "lifestyle" rooms. Hotel management stated that the change had already been planned before Measure N's passage. The management also indicated that the space housing the 44 standard rooms would be converted to additional eating and fitness areas.

Press-Telegram, that it was reducing its rooms, but didn't confirm by how many. The labor group UNITE-HERE Local 11, which was one of the supporters of Measure N, said they were told the reduction would drop the hotel from 174 rooms to 99 in order to avoid Measure N regulations.

In the process, the hotel laid off five employees last week, UNITE-HERE said.⁶⁴

Shortly after passage of Measure N, Maria Elena Durazo, the head of the Los Angeles County Federation of Labor AFL-CIO, stated, "The Long Beach model should be taken everywhere."⁶⁵ In fact, it didn't take long for the city council to act on that advice. On February 11, 2014, it passed an ordinance raising the minimum wage for concessions and retail workers at the Long Beach Airport and Convention Center to \$13.26 per hour. Like Measure N, the ordinance contained a union escape clause. Unsurprisingly, UNITE-HERE Local 11 was the primary sponsor of the measure.⁶⁶

A number of affected hotels responded by remodeling to combine multiple rooms into larger suites in order to get below the 100 room threshold. Other hotels got below 100 rooms by shuttering rooms or even whole floors, simultaneously laying off hotel staff members.

Washington, D.C.'s Large Retailer Accountability Act

While the above examples all occurred on the West Coast, that region is not the only one where unions have sought to engineer minimum wage carve-outs. For example, on June 26, 2013, the Council for the District of Columbia passed the Large Retailer Accountability Act of 2013 (LRAA)

⁶⁴ Duckett, *As Long Beach Measure N Goes into Effect, Hotels Consider Hiking Rates, Cutting Rooms*.

⁶⁵ Duckett, *Long Beach Hyatt Hotel Workers Plan to Unionize with Unite Here Local 11*.

⁶⁶ Howard Fine, *Long Beach Hikes Wages for Airport, Convention Center Workers*, Los Angeles Business Journal, February 5, 2014.

on the first reading. The bill required all retailers with more than 75,000 square feet of store space and whose parent company grossed at least \$1 billion per year to pay their employees a “living wage” of \$12.50 per hour. The debate over the bill was highly contentious, with opponents predicting that it would drive businesses out of the city.⁶⁷

The LRAA was labeled the “Walmart Bill” during its legislative journey because it would have effectively applied only to the Arkansas-based retailer, which was building and opening several stores within the District. To make the bill appear more evenhanded, the square footage requirement was removed from the bill for a period of time, but this provision was reinserted by amendment shortly before the council voted 8-5 to approve it. As one Washington, D.C., media commentator noted:

[W]ith the square footage restriction reinserted, it’s once again largely a shot at Walmart, which is planning six stores in the District. Only a handful of existing D.C. retailers will be affected . . . “If this is about sticking it to Walmart, we should be honest and say so,” said Ward 4 Councilmember Muriel Bowser during today’s debate, before voting against the bill.⁶⁸

Ward 6 Council Member Tommy Wells further noted that the LRAA would have created a barrier to getting retail employers to locate in the city’s most depressed communities:

And Ward 6 Councilmember Tommy Wells, who voted against the bill, says in a statement, “The Large Retailer Act has negative impacts and direct consequences for some of the poorest areas of our city. The act creates a barrier to getting large grocery stores, other retailers and job creators to locate east of the river, in the communities

⁶⁷ Aaron Wiener, *Living Wage Bill Clears Committee, Heads for Full Council Vote*, Washington City Paper, May 31, 2013, available at www.washingtoncitypaper.com/blogs/housingcomplex/2013/05/31/living-wage-bill-clears-committee-heads-for-full-council-vote/. Last visited October 27, 2014.

⁶⁸ Aaron Wiener, *Council Passes Living Wage Bill*, Washington City Paper, June 26, 2013, available at www.washingtoncitypaper.com/blogs/housingcomplex/2013/06/26/council-passes-living-wage-bill/. Last visited October 27, 2014.

of our city with the greatest need. D.C. has one of the highest costs of living [in] the nation, and this act perpetuates those impossibly high costs in our most depressed communities. The act also hurts those in need of jobs, especially youth seeking after school jobs.”⁶⁹

The LRAA bill included the familiar union escape clause. This appeared to be an unabashed attempt to force Walmart to agree to unionize its D.C. workforce. The clause would have primarily benefited the United Food and Commercial Workers union, which has been engaged in a long — and unsuccessful — campaign to organize Walmart.

The Large Retailer Accountability Act included the familiar union escape clause. This appeared to be an unabashed attempt to force Walmart to agree to unionize its D.C. workforce.

In response to passage of the LRAA, Walmart vowed to abandon its plans to develop multiple stores within the District. Perhaps as a result, D.C. Mayor Vince Gray vetoed the bill when it arrived on his desk. Although the council tried to override the mayor’s veto, it failed by one vote.

Washington, D.C., did not forget about the minimum wage, however. Three months later, the city council unanimously passed a minimum wage bill applicable to all employers, which set the wage rate at \$9.50 per hour, with provisions to further increase the minimum wage in subsequent years. Notably, the new law did *not* include a union escape clause.

Milwaukee County’s Minimum Wage Ordinance

In March of 2014, Milwaukee County passed a minimum wage ordinance that mandates an \$11.32 per hour minimum wage. It applies to employers that have service contracts or leases with the county worth at least \$20,000, or developments receiving at least \$1 million of economic

⁶⁹ *Ibid.*

subsidies from the county.⁷⁰ The ordinance includes a fairly broad list of exemptions, including nonprofit institutions, cultural institutions, and other units of government with which the county does business. It also includes a union escape clause.⁷¹

County Executive Chris Abele vetoed the living wage ordinance on March 19, 2014, but that veto was overridden by a county board vote of 12 to 6. In his memorandum explaining his rationale for the veto, Abele expressed significant concern over the union escape clause in the new law:

This means that an employer would not have to actually pay this higher wage to its employees, if that employer collects union member fees from its employees. That flies in the face of what Supervisors say this ordinance is supposed to do: raise the wages of workers. **This exemption creates the impression that the only people who would benefit from this Board action are the unions who will see a significant increase in the money they collect from workers, while the workers for these employers do not see an increase in their wages. (emphasis added)**⁷²

Abele noted that unions had already commenced negotiations to waive the minimum wage requirement:

We have already seen this happen to one organization — Supportive Homecare Options (SHO) — where the union is attempting to negotiate an agreement where SHO would collect member dues from its employees (approximately an additional \$300,000 in annual revenue for the union, according to SHO) in exchange for waiving the living

⁷⁰ To enforce the new ordinance and monitor companies it applies to, Milwaukee County added three employees at an estimated annual cost of \$217,369. See Katie DeLong, *Milwaukee County's "Living Wage" Ordinance Will Cost Taxpayers After All*, Fox6now.com, April 24, 2014.

⁷¹ Milwaukee County General Ordinance 111.03(2)(b).

⁷² March 19, 2014, memorandum of Milwaukee County Executive Chris Abele to The Honorable Milwaukee Board of Supervisors, *RE: Veto of County Board File No. 13-955 on Issue Related to the Living Wage Ordinance*, available at http://county.milwaukee.gov/ImageLibrary/Groups/cntyExecutive/Press_Releases/2013/Livingwageveto.pdf. Last visited October 27, 2014.

wage provision.

This provision clearly creates a two-class employer system, as only select employers have to pay a living wage, and a disparity in various parties' ability to compete on an equal basis for Milwaukee County contracting opportunities. **This certainly does not appear to be unions fighting for workers, but rather for themselves.** (*emphasis added*)⁷³

Chicago's Minimum Wage Ordinance

On December 2, 2014, the Chicago City Council passed an ordinance increasing the city's minimum wage to \$13 per hour. This ended an eight-year debate over the issue.

Eight years ago, the City Council gave Wal-Mart and other 'big box' stores four years to pay their employees \$13 an hour in wages and benefits. Then-Mayor Richard M. Daley killed the ordinance with his only veto and made it stick by winning three crossover votes. That prompted organized labor to spend millions to elect a more union-friendly Council. On Tuesday [December 2, 2014], Mayor Rahm Emanuel led a stampede of aldermen in the opposite direction in a move that, if it sticks, could help Emanuel . . . undercut the progressive base of his strongest challengers.⁷⁴

The 44-to-5 City Council vote will raise the city's minimum wage in stages. On June 1, 2015, the minimum wage will increase to \$9.50 per hour. It will then rise by 50 cents per hour in 2016 and 2017 and by \$1 per hour in 2018 and 2019 to reach a peak of \$13 per hour. Thereafter, the annual wage increase will correspond to the rate of inflation or 2.5

⁷³ *Ibid.*

⁷⁴ Fran Spielman, *City Council Raises Chicago's Minimum Hourly Wage to \$13*, Chicago Sun-Times, 12/2/14, available at <http://politics.suntimes.com/article/chicago/city-council-poised-raise-chicagos-mimumum-wage-13-hr/tue-12022014-943am>. Last visited 12/3/14.

percent, whichever is lower. The hourly wage for tipped employees would rise to \$5.45 per hour in 2015 and \$5.95 per hour in 2016. Thereafter, it, too, would increase along with the consumer price index. Wage increases would be frozen if the unemployment rates rose above 8.5%.⁷⁵

The City Council set a low threshold for what constitutes a “covered employee” under the ordinance. Employees who spend as little as two hours over a two-week period working within the boundaries of Chicago must receive the new minimum wage. This applies to all hours worked in the city, so long as their employer has a facility in the city or is required to hold a city license.⁷⁶

However, these requirements may not apply to certain employers because the new ordinance includes the typical collective bargaining exemption. Thus, any wage hikes can be negotiated away if an employer has a union, or agrees to unionize.⁷⁷

Los Angeles’ Minimum Wage Hike

After the minimum wage increases for the hotel sector discussed above, the Los Angeles city council decided to take up the issue on a citywide basis. In September 2014, advocates of a minimum wage increase had found an ally in Mayor Eric Garcetti, who proposed raising the minimum wage to \$13.25 by 2017.⁷⁸ The mayor’s proposal would have gradually raised the current minimum wage to \$10.25 in 2015, \$11.75 in 2016, and \$13.25 in 2017, with future increases pegged to the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

Despite the mayor’s proposal, a coalition called Raise the Wage pressured the council to enact legislation that would increase the minimum

⁷⁵ *Ibid.*

⁷⁶ *Chicago Minimum Wage Ordinance, Chicago City Council*, 12/2/14, available at [http://op.bna.com/dlrcases.nsf/id/cscz-9rev3h/\\$File/chicago%20min.pdf](http://op.bna.com/dlrcases.nsf/id/cscz-9rev3h/$File/chicago%20min.pdf). Last visited 12/3/14.

⁷⁷ *Ibid.*

⁷⁸ Office of the Los Angeles Mayor; “Mayor Garcetti announces proposal to raise the minimum wage in Los Angeles to \$13.25 in 2017; September 1, 2014; available at <http://www.lamayor.org/may-garcetti-announces-proposal-raise-minimum-wage-los-angeles-1325-2017>. Last visited May 3, 2016.

wage in the city to \$15.25 and also require paid sick leave.⁷⁹ Not surprisingly, Raise the Wage had the backing of organized labor, and its co-chair, Rusty Hicks, was the head of the L.A. Federation of Labor. In a column advocating for the increased wage, Hicks and another Raise the Wage leader asserted that, “Raising the wage and ensuring that workers actually receive a full paycheck is critical to continuing to grow the Los Angeles economy and ensuring workers can move toward the middle class.”⁸⁰

After several months of debate, in May 2015 the city council enacted a citywide minimum wage ordinance that would raise the minimum wage to \$15 an hour by 2020 for up to 800,000 workers in the city.⁸¹ As part of the negotiations over the bill, the council agreed to drop the requirement for up to twelve days of paid leave, though that did little to mollify the business community facing a massive increase in labor costs.

Interestingly, the Los Angeles ordinance did not include a carve-out for collective bargaining agreements. However, it did not take long for labor leaders to ask for one. Barely a week after the new minimum wage law passed, the same Rusty Hicks who had advocated for the new wage stated publicly that companies and labor unions should be allowed leeway

Interestingly, the Los Angeles ordinance did not include a carve-out for collective bargaining agreements. However, it did not take long for labor leaders to ask for one. Barely a week after the new minimum wage law passed, the same Rusty Hicks who had advocated for the new wage stated publicly that companies and labor unions should be allowed leeway to negotiate lower wages.

⁷⁹ See <http://www.laraisethewage.org/about>.

⁸⁰ Laphonza Butler and Randy Hicks, *Raise Los Angeles' Minimum Wage and Enforce It*, Huffpost Los Angeles; April 22, 2015; available at http://www.huffingtonpost.com/laphonza-butler/los-angeles-minimum-wage_b_7118506.html. Last visited May 2, 2016.

⁸¹ Peter Jamison, David Zahniser and Alice Walton, *Los Angeles' minimum wage on track to go up to \$15 by 2020*, Los Angeles Times, May 19, 2015; available at <http://www.latimes.com/local/lanow/la-me-ln-minimum-wage-hike-20150518-story.html#page=1>. Last visited May 2, 2016.

to negotiate lower wages. As Hicks put it, “With a collective bargaining agreement, a business owner and the employees negotiate an agreement that works for them both. The agreement allows each party to prioritize what is important to them... This provision gives the parties the option, the freedom, to negotiate that agreement. And that is a good thing.”⁸²

The poor timing of the union request for an exemption resulted in a flurry of negative publicity, with one commenter responding to Hicks’ statement saying, “it’s difficult to know whether to giggle, guffaw or scream in rage at the arrogance of that” and calling the ploy “really quite glorious as a display of sheer naked chutzpah.”⁸³ The *Los Angeles Times* editorial board lambasted the union carve-out saying, “This is hypocrisy at its worst, and it plays into the cynical view that the federation is more interested in unionizing companies and boosting its rolls of dues-paying members than in helping poor workers.”⁸⁴

Confronted by nearly universal condemnation, labor leaders backed off of their request for an exemption, only to push for it again in April 2016 after the initial criticism waned.⁸⁵ After news of the renewed proposal started to spread, a spokesman for a council member reportedly stated that the proposed exemption would not be considered.⁸⁶

⁸² Peter Jamison , David Zahniser and Emily Alpert Reyes, *L.A. labor leaders seek minimum wage exemption for firms with union workers*, Los Angeles Times; May 27, 2015; available at <http://www.latimes.com/local/lanow/la-me-ln-los-angeles-minimum-wage-unions-20150526-story.html>. Last visited May 2, 2016.

⁸³ Tim Worstall, *Hypocrisy Thy Name Is Union; Unions Demand Exemption From LA’s \$15 Minimum Wage* *Forbes*; May 27, 2015; available at <http://www.forbes.com/sites/timworstall/2015/05/27/hypocrisy-they-name-is-union-unions-demand-exemption-from-las-15-minimum-wage/#4993dbf93f0e>. Last visited May 2, 2016.

⁸⁴ The Times Editorial Board, *LA labor leaders’ hypocrisy on minimum wage hike*, Los Angeles Times; May 29, 2015; available at <http://www.latimes.com/opinion/editorials/la-ed-union-minimum-wage-20150529-story.html>. Last visited May 2, 2016.

⁸⁵ Lydia DePillis, *Why unions’ huge minimum wage win may not bring in new members*, The Washington Post; May 29, 2015; available at <https://www.washingtonpost.com/news/wonk/wp/2015/05/29/why-unions-huge-minimum-wage-win-may-not-bring-in-new-members/>. Last visited May 2, 2016. Jana Kasperkevic, *LA unions call for exemption from \$15 minimum wage they fought for*, The Guardian; April 12, 2016; available at <http://www.theguardian.com/us-news/2016/apr/12/los-angeles-15-dollar-minimum-wage-unions>. Last visited May 2, 2016.

⁸⁶ Melissa Quinn, *LA City Council Halts Discussion Of Minimum Wage Exemption Pushed By Labor Unions*, The Daily Signal; April 15, 2016; available at <http://dailysignal.com/2016/04/15/la-city-council-halts-discussion-of-minimum-wage-exemption-pushed-by-labor-unions/>. Last visited May 4, 2016.

Berkeley's Ordinance

In June of 2014, Berkeley, California adopted a minimum wage ordinance that gradually raised the minimum wage, with the last increase scheduled to take effect on October 1, 2016. As of that date, the minimum wage for each employee who performs work within the geographic boundaries of Berkeley will be \$12.53 per hour.⁸⁷ The ordinance included a union exemption, which allows “the requirements to be waived in a bona fide collective bargaining agreement.”⁸⁸

Unfortunately, small businesses in Berkeley did not receive similar preferential treatment and are already feeling the effects of the wage increase. The popular Berkeley coffee shop Mokka announced in January 2016 that it would be closing its doors for good. While counterintuitively not opposing the wage hikes, its owner explained, “We have decided not to renew our lease primarily as a result of the rising minimum wage in Berkeley. The increase from \$10 in September 2015 to \$12.53 this October, coupled with the continuing rise to \$15, requires a new business model for us.”⁸⁹ Another popular café owner decided not to close, at least yet, but expressed her frustration, saying “I created it with such love that I can’t drop it so easily, but economically, it’s a super big strain.”⁹⁰

To make matters worse, many Berkeleyans coupled with labor coalitions have been pushing for an additional increase in wages and an acceleration of the stepped increases in the 2014 ordinance. In April 2016, labor groups pushed the Berkeley City Council to place a measure on the November

⁸⁷ City of Berkeley Health, Housing & Community Services Department, Official Notice to employers and employees working in occupations in the City of Berkeley; Available at [http://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/MWO%20Notice%20\(Final\).pdf](http://www.cityofberkeley.info/uploadedFiles/Housing/Level_3_-_General/MWO%20Notice%20(Final).pdf). Last visited May 6, 2016.

⁸⁸ City of Berkeley, Ordinance No. 7,352-N.S.; Available at http://www.cityofberkeley.info/uploaded-Files/Housing/Level_3_-_General/MW%20Ordinance%20from%20Records%20on%20line.pdf. Last visited May 6, 2016.

⁸⁹ Tracey Taylor, *Mokka to close: Minimum wage rise a major factor*, NOSH: Dining on the East Bay; January 28, 2016; Available at <http://www.berkeleyside.com/2016/01/28/mokka-to-close-minimum-wage-rises-a-major-factor/>. Last visited May 6, 2016.

⁹⁰ Frances Dinkelspiel, *Café Clem revamps to cope with labor, food costs*, NOSH: Dining on the East Bay; January 11, 2016; Available at <http://www.berkeleyside.com/2016/01/11/cafe-clems-owner-re-vamps-berkeley-restaurant-to-cope-with-rising-labor-food-costs/>. Last visited May 6, 2016.

2016 ballot to increase the minimum wage to \$15 by October 2017.⁹¹

The City Commission on Labor went further and proposed a \$19 minimum wage by 2020, though that proposal was rejected. The Commission had also proposed to include cost-of-living adjustments to the ordinance and a system of mandatory paid sick leave.⁹² The Commission did not, however, propose to remove the union escape clause from the ordinance, but suggested it be “corrected to properly reference federal law.”⁹³

Since the effects of the minimum hourly wage amount have already hit businesses hard, the escape clause for labor unions could make a collective bargaining agreement seem like an attractive option.

On April 26, 2016 the Berkeley City Council moved forward with a “more moderate” version to increase the minimum wage to \$15 by 2019 while also placing a separate minimum wage proposal on the November 2016 ballot. Since the effects of the minimum hourly wage amount have already hit businesses hard, the escape clause for labor unions could make a collective bargaining agreement seem like an attractive option.

Santa Monica’s Minimum Wage

On April 27, 2016, the City of Santa Monica finalized a minimum wage ordinance that will phase in the increases over the course of four years. The current rate will go up to \$10.25 on July 1, 2016, with annual increases to \$12, \$13.25, and \$14.25 until it reaches \$15 in 2020. The ordinance also establishes separate wage rates for hotel workers. Starting

⁹¹ Frances Dinkelspiel, *Berkeleyans to be asked to accelerate \$15 minimum wage*, BerkeleySide; April 21, 2016; available at <http://www.berkeleyside.com/2016/04/21/berkeleyans-to-be-asked-to-accelerate-15-minimum-wage/>. Last visited May 3, 2016.

⁹² Emily Raguso, *Berkeley City Council to consider \$19 minimum wage*, BerkeleySide; September 14, 2015; Available at <http://www.berkeleyside.com/2015/09/14/berkeley-council-to-consider-19-minimum-wage/>. Last visited May 3, 2016.

⁹³ City of Berkeley Commission on Labor, Memorandum to Honorable Mayor and Members of the City Council; September 15, 2015; available at <http://www.berkeleyside.com/wp-content/uploads/2015/09/2015-09-15-Item-59a-Revisions-to-Minimum-Wage.pdf>. Last visited May 3, 2016.

on July 1, 2016, the minimum wage will be \$13.25 for hotel workers and increase to \$15.37 on July 1, 2017. Thereafter, it will increase with the consumer price index. Businesses with 25 or fewer employees will be granted an extra year to phase in the annual increases.⁹⁴ The ordinance allows the provisions to be “waived in a bona fide collective bargaining agreement.”⁹⁵

The city council enacted the law proudly and even argued that this is “the best and most complete minimum wage ordinance in the country.”⁹⁶ Likewise, Mayor Tony Vazquez argued that the minimum wage hike would help the city to be more affordable and offer an opportunity to families to build a strong future.⁹⁷ However, business leaders voiced their objection to the union exemption, with one writing: “This is not fair. What’s good for all should apply for all. Please don’t exempt special interests.” At least one council member voiced the same opinion, saying “I think the minimum wage being raised needs to apply equally to everyone.”⁹⁸

Palo Alto

On February 9, 2015, the Palo Alto, California, city council considered a “dear colleague” memo recommending the adoption of a city-wide minimum wage ordinance to match those of surrounding cities. As the legislative process ensued, the Palo Alto city attorney submitted a recommendation to the city council to increase the minimum wage to \$11.00 and collaborate with surrounding cities to create a regional minimum of \$15 by 2018.⁹⁹

⁹⁴ City of Santa Monica; Minimum Wage Proposal, City of Santa Monica Minimum Wage; available at https://www.smgov.net/departments/HED/Economic_Development/Minimum_Wage_Proposal.aspx. Last visited May 4, 2016.

⁹⁵ *Ibid.*

⁹⁶ Jonathan Friedman, *Council Makes Tweaks to Santa Monica Minimum Wage Law*, Santa Monica Lookout; April 29, 2016; available at http://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2016/April-2016/04_29_2016_Council_Makes_Tweaks.html. Last visited May 4, 2016.

⁹⁷ <http://www.canyon-news.com/minimum-wage-ordinance-finalized-for-santa-monica/50586>

⁹⁸ Jonathan Friedman, *Council Makes Tweaks to Santa Monica Minimum Wage Law*, Santa Monica Lookout; April 29, 2016; available at http://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2016/April-2016/04_29_2016_Council_Makes_Tweaks.html. Last visited May 4, 2016.

⁹⁹ City of Palo Alto Office of the City Attorney, *Recommendation to Adopt an Ordinance Implementing a Local Minimum Wage Requirement of \$11.00 by January 1, 2016 and Discussion of Collaborating With Other Cities to Implement a Regional Minimum Wage of \$15.00 Per Hour by 2018*; August 24, 2015; available at <http://www.cityofpaloalto.org/civicax/filebank/documents/48547>. Last visited May 4, 2016.

On October 19, 2015, the Palo Alto City Council passed the Minimum Wage Ordinance, which went into effect on January 1, 2016. As the city attorney suggested, the ordinance raises the minimum wage to \$11.00 per hour to all employees who work two hours per week within Palo Alto. Each year, the minimum wage will adjust based on the U.S. Department of Labor’s Regional Consumer Price Index.¹⁰⁰

In addition to raising the wage, Palo Alto’s ordinance exempted unions with collective bargaining agreements. Like others, the exemption says that under a bona fide collective bargaining agreement, an employer may waive the requirements of the minimum wage ordinance.

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Emeryville’s Minimum Wage Law

In June 2015, Emeryville, California, enacted a citywide minimum wage ordinance which raised the minimum wage and required paid sick leave in excess of what the State of California requires.¹⁰² The new ordinance went into effect on July 2, 2015, and provides for slightly lower rates for businesses with 55 or fewer employees until 2019, when all employers will pay a uniform rate. As of July 1, 2016, the minimum wage will increase \$13 per hour for small businesses and \$14.82 per hour for large businesses.¹⁰³ In addition, the Emeryville ordinance requires a maximum of 48 paid sick leave hours for employees of small businesses (55 or fewer employees within Emeryville city limits) and 72 hours for employees of

¹⁰⁰ City of Palo Alto, *Minimum Wage* webpage; March 16, 2016; available at http://www.cityofpaloalto.org/gov/topics/minimum_wage.asp. Last visited May 4, 2016.

¹⁰¹ Council Of The City Of Palo Alto, Ordinance No. 5355, <http://www.cityofpaloalto.org/civica/x/filebank/documents/49919>. Last visited 4/21/16.

¹⁰² See <http://www.ci.emeryville.ca.us/1024/Minimum-Wage-Ordinance>. Last visited May 6, 2016.

¹⁰³ *Ibid.*

large businesses (56 or more within Emeryville city limits).

The Emeryville city council's decision to rapidly increase wages also came with a union escape clause. All of the ordinance's measures, including the additional sick leave provisions, can be waived in a bona fide collective bargaining agreement.¹⁰⁴

Once again, labor unions secured an exemption that would encourage businesses to consider whether negotiating wages with a union might be better for them. Emeryville's wage hike is scheduled to rise faster than many other neighboring cities in the region. With its not-so-gradual phase in, it will eventually even outpace Seattle.¹⁰⁵ Emeryville Mayor Ruth Atkin was confident with the city's approach, and she defended her policy by asking, "What purpose is a minimum wage, if it isn't a living wage?" What she did not explain was why unions should be exempted.

The Emeryville city council's decision to rapidly increase wages also came with a union escape clause. All of the ordinance's measures, including the additional sick leave provisions, can be waived in a bona fide collective bargaining agreement.

El Cerrito

On November 17, 2015, the city of El Cerrito adopted an ordinance to establish a local minimum wage in starting in 2016, with stepped increases to raise the rate to \$15.00 an hour by 2019. Employers will see the minimum wage go up to \$11.60 per hour beginning July 1, 2016, followed by increases to \$12.25 on Jan. 1, 2017, and \$13.60 on Jan. 1, 2018, before rising to \$15 on Jan. 1, 2019. In addition, tips cannot count toward the payment of the minimum wage.

Beginning in 2020, the minimum wage will have a cost-of-living

¹⁰⁴ City of Emeryville, Ordinance 15-004, available at <http://www.ci.emeryville.ca.us/DocumentCenter/Home/View/8034>. Last visited May 6, 2016.

¹⁰⁵ Roland Li, *Emeryville votes for the highest minimum wage in the country*, San Francisco Business Times; May 6, 2015.

adjustment using the local consumer price index.¹⁰⁶ The ordinance also included the boilerplate escape clause for wages determined through a collective bargaining agreement.

IV. Conclusion

Many advocates for a higher minimum wage portray it as a means of improving the lives of workers, putting more money into the economy, and increasing growth. So, it is surprising that some minimum wage ordinances include an exemption that potentially undermines all three goals.

This contradiction, however, is not without its own logic — at least from the union perspective. Organizing from the bottom up (i.e., convincing workers of the merits of membership) has proven difficult for unions. Therefore, they have solicited the coercive power of government to help them organize from the top down.

Thus, we see minimum wage and living wage ordinances that offer employers an escape hatch if they negotiate a collective bargaining agreement. However, this union exemption can result in a number of perverse outcomes. First, employers may wind up tied to a union contract they would otherwise not have signed. Second, workers could find themselves enrolled in a union they did not want to join and that might otherwise not have won recognition. Third, workers could discover that they are not receiving the wage and benefit increases included in the law, and on top of that have to pay union dues.

Given organized labor's role in many local minimum wage campaigns, the union escape clause highlighted in this report is likely to appear more frequently. As the debate over the issue spreads and newly proposed ordinances appear, it would be wise to read the fine print.

¹⁰⁶ The City of El Cerrito, California; *Local Minimum Wage Goes Into Effect July 1, 2016*; Available at <http://www.el-cerrito.org/index.aspx?NID=940>. Last visited May 6, 2016.



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