



# Information Item

**Date: December 16, 2015**

To: Mayor and City Council

From: Gigi Decavalles-Hughes, Director of Finance  
Andy Agle, Director of Housing and Economic Development

Subject: Summary of Minimum Wage Outreach and Recommendations

## **Introduction**

This report describes staff's minimum wage outreach process following the September 29, 2015 Council meeting, highlights key points from community and stakeholder feedback, and provides the community, stakeholder groups, and Council an indication of staff's proposed direction for the ordinance. Sharing this information provides additional time for community response and input into the final recommendation. The report summarizes stakeholder feedback on a hotel wage, service charges, seasonal employment, paid leave, and enforcement. To contribute to informed and open community dialogues leading up to final Council action in January, this Information Item includes a summary of staff's policy recommendations which are the result of months of public outreach and staff research. Staff plans to incorporate these recommendations into the proposed minimum wage ordinance that will be presented to Council on January 12, 2016.

## **Discussion**

Staff held a variety of stakeholder group meetings and one general community meeting. The meetings focused on the five key issues for which Council directed staff to gather feedback and input: hotel wage, service charges, seasonal employment, paid leave, and enforcement, though many participants also provided more general feedback on the proposed minimum wage. Staff set up meetings through business and worker

advocacy organizations, and reached out to groups with specific expertise in minimum wage education, enforcement and wage theft issues.

During October and November, staff held meetings and discussions with the following groups:

- Restaurant, hotels, and small businesses, organized through the Chamber of Commerce (October 27, 2015)
- Hotel operators and related tourism-oriented businesses, organized through Santa Monica Travel & Tourism (SMTT) (November 10, 2015)
- Seasonal employers
- Hotel and restaurant workers, organized through Unite Here Local 11 (November 10, 2015)
- Restaurant workers and lower-wage worker advocates, organized through the Restaurant Opportunities Center Los Angeles (ROC LA) (November 9, 2015)
- Community members and other stakeholders, through a general public meeting (November 12, 2015)
- The UCLA Labor Center (October 29, 2015)

In addition to these meetings, staff held informal discussions with community members and other stakeholders, answered questions via phone and email, and set up and maintained a City website with minimum wage information.

The sections below capture information shared during the meetings, and present some key points staff learned from each discussion. This provides a general overview of the meeting tone and response. The majority of community and stakeholder input was supportive of the minimum wage proposal, and reflected Santa Monica's value for its employees and unique character as a city and destination.

In addition to meeting feedback, staff encouraged advocacy groups to submit formal positions on minimum wage items. The Santa Monica Neighborhood Restaurant

Coalition (SMNRC), the Chamber of Commerce, Santa Monica Travel and Tourism (SMTT), Unite Here Local 11, the Restaurant Opportunities Center Los Angeles (ROCLA), the Housing Commission, and a group of Los Angeles hotel associations (American Hotel & Lodging Association, California Hotel & Lodging Association, Hotel Association of Los Angeles), submitted formal statements containing their positions on the minimum wage under consideration; and the Green Party Council endorsed the proposed minimum wage. These statements are included as Attachments A-G of this report. These communications are distinct from the feedback summarized in this report in that they provide specific consensus recommendations and statements from the group or organization. These are included to provide a full picture of minimum wage outreach response. Staff carefully reviewed the formal positions in crafting a proposed ordinance.

### ***Employers and Business Advocacy Groups***

Staff met with restaurant and business owners, hotel operators and employer interest group staff through meetings organized by the Chamber of Commerce (October 27, 2015) and SMTT (November 10, 2015), and held discussions with seasonal employers. These groups generally favor a phased hotel wage increase; flexible, limited service charge regulation; a seasonal exception for certain employers; five days of paid leave, and strong education and outreach, with meaningful enforcement for noncompliant businesses.

### **Chamber of Commerce Meeting**

**Who attended:** 30 attendees, representing restaurant owners and managers, hotel operators, and Santa Monica Chamber Board members.

### **Major takeaways:**

- Flexibility is important for service charges; language should ensure back of the house (i.e., cooks, dishwashers) can participate.

- Paid leave should be consistent with State law to avoid adding administrative burden.
- Concern about independent businesses surviving and general affordability of goods, services, and operations in Santa Monica.
- Adopting different policy than LA for service charge regulation and / or paid leave would place restaurants at a competitive disadvantage.

**Formal communication:**

- Santa Monica Neighborhood Restaurant Coalition (SMNRC) Service Charge Recommendation (Attachment A)
- Chamber of Commerce Minimum Wage Position (Attachment B)

Santa Monica Travel & Tourism (SMTT) Meeting

**Who attended:** 30 attendees representing hotels including Casa del Mar, Doubletree, Loews, Oceana Hotel, Ocean View Hotel, Shore, Shutters; and SMTT and Chamber of Commerce staff

**Major takeaways:**

- July 2016 timing of a hotel wage (\$15.37/hr) increase would negatively impact operations, especially food and beverage service; could lead to significant operation and service level changes or cuts; accounting and financing concerns raised with the very short notice period to implement.
- Given competition for employees, all hotels will likely need to pay similar wages, even if the hotel wage application is tiered.
- The same rules should apply to all businesses; targeting the hospitality sector does not seem fair.
- Hotel wage increase could reinforce Santa Monica's reputation as an expensive and unaffordable destination.

- Hotels provide a variety of non-wage employee benefits including health care, paid time off, transportation, employee discounts, and employee recognition that might be impacted with a wage increase.
- Hospitality industry is anticipating additional tax increases and other policy impacts to the industry, there is growing competition from expanding regional market; wage increase adds another concern.

**Formal communication:**

- SMTT Survey and Report (Attachment C)

Seasonal Employers Discussion

**Participants:** Pacific Park and Perry's

**Major takeaways:**

- About one-third of Perry's and one-half of Pacific Park employees are first time workers.
- During peak season, both businesses employ a significant number of students and people under the age of 25
- Both businesses increase staffing during peak times.
- Both businesses anticipate cutting staff or hours to comply with the minimum wage if there is no exception in the ordinance.

***Employees and Worker Advocacy Groups***

Staff met with restaurant hotel workers and advocacy groups through meetings organized by Unite Here Local 11 (November 10, 2015) and the Restaurant Opportunities Center (November 9, 2015). These groups favor a hotel wage increase matching LA's effective July 2016; strict service charge regulation; limited, targeted seasonal exception if any, paid leave to match Oakland and San Francisco (5 days small business, 9 days larger), and strong education and outreach through community based organizations.

### Unite Here Local 11 Meeting.

**Who attended:** 15 Santa Monica hotel and restaurant workers, representing employers with and without collective bargaining agreements

#### **Major takeaways:**

- Employers should disclose service charge distribution to employees and should not reduce pay for front-of-house employees who currently share in distribution of service charges.
- Retaliation protections for paid leave and for other wage issues are critical for ensuring workers receive benefits associated with wage increase.
- Need to have real consequences for employers committing wage violations.
- Any seasonal work exception should be targeted and limited to ensure that employers do not cut hours or maintain short term jobs, or replace permanent with temporary staff to take advantage of it.
- Communication to employers and workers through multiple types of media and in several languages is important.
- Managers and supervisors should be excluded from service charge revenue.

#### **Formal communication**

- Unite Here Local 11 Service Charge Recommendation (Attachment D)

### Restaurant Opportunities Center Los Angeles Meeting

**Who attended:** Three attendees, representing ROC LA and Santa Monica restaurant workers

#### **Major takeaways:**

- Front of house staff are more likely to have fewer, more unpredictable hours than back of house staff, at a slightly lower wage overall and therefore rely on tips as well as hourly wage
- Important for employers to disclose service charge distribution to employees

- Including managers and supervisors in the distribution can encourage misclassification
- Programs to reward best practices / employers providing generous benefits can be helpful
- Targeted enforcement in especially vulnerable industries is most effective use of resources
- No other California city has a seasonal employment exception
- Youth workers often have family and other financial responsibilities
- Leave provisions should include ability to use leave for domestic violence or stalking, and, consistent with federal law, to extend coverage to same sex partners

### **Formal communication**

- ROC LA Service Charge Recommendation (Attachment E)

### **Community Response**

Staff held a community meeting at the Main Library for all interested groups. This included a short presentation outlining the major wage provisions, and Council direction for the five key areas Council directed staff to consider. Attendees then had the opportunity to respond to each issue area through written response at stations, and there was time for group discussion and public comment. Comments from these stations by issue area are included as Attachment H.

### **Community Meeting**

**Who attended:** 48 attendees, representing hotel, restaurant, and retail employers and employees, as well as advocacy groups, local residents, and community members

### **Major takeaways:**

- A minimum wage increase fits with the City's values.
- Santa Monica hotels should be able to match Los Angeles wages.

- Customers would be willing to pay more at restaurants to support fair wages, but do not necessarily want to see list of surcharges.
- Restaurants face high costs and want to continue to provide jobs, retain staff and provide food at costs that are affordable to Santa Monica residents and visitors.
- Youth deserve jobs with good wages.
- The community should protect first time workers.

Staff also received questions and comments via phone and email. In general, these were supportive of the minimum wage. Many had questions about the collective bargaining exemption and the outreach process. Staff responded to these inquiries, provided additional information, and recommended that individuals participate in the public process.

### ***Issue Expert Input***

The UCLA Labor Center conducts minimum wage research and has worked with Los Angeles and other California cities on local minimum wage ordinances. Their area of expertise is wage enforcement. A representative from the UCLA Labor Center spoke at the September 29 Council meeting, providing recommendations for Santa Monica enforcement provisions. At that meeting, Council recommended that staff consult with the group when developing education and enforcement measures.

### **UCLA Labor Center Meeting**

**Who attended:** Legal Policy and Research Manager, ROC LA staff

### **Major takeaways:**

- Use San Francisco and Los Angeles as a models for enforcement provisions.
- Major areas of importance are ability to:
  - *collect*: revocation of licenses and permits, liens, penalties and fines;
  - *protect*: retaliation provisions and rebuttable presumption; and
  - *enforce*: strict liability and misdemeanor option.

- Strongly recommended the City partner with community-based organizations for outreach and education, and work with the Los Angeles City or County enforcement agencies.
- Recommended targeted versus random audits, identifying vulnerable industries and working closely with community groups to reach these.
- Emphasized communication and informal resolution of violations

### **Staff Recommendations**

Staff considered input from all groups, conducted additional research on other minimum wage ordinances in California and other parts of the country, and referred to Council direction and community values in developing recommendations in each area. Because the policy issues are challenging and there are many stakeholders with divergent views, staff is taking the unusual step of previewing its recommendations with the goal of facilitating continued open and collaborative community dialogue leading up to final Council action.

Staff recommends:

- A hotel minimum wage applied to all hotels, phased in over two years to reach \$15.37 by July 1, 2017
- Service charge direction based on worker advocacy group language, and incorporating elements of SMNRC recommended language, to ensure that
  - service charge income goes to employees providing the service, including back of house staff;
  - businesses provide detailed and clear information to consumers about service charges and other surcharges;
  - businesses can use other surcharges as long as clearly described; and
  - service charge income distribution is permitted among all employees not in a primarily managerial or supervisory role.

- An exception permitting employers to pay 85% of the minimum wage to employees working for the first time in a job at which they have no related or similar experience, for their first 480 hours or six months (whichever is sooner)
- Paid leave of five days for businesses with 25 or fewer employees, and nine days for larger businesses
- Enforcement provisions consistent with San Francisco and Los Angeles, funding for community outreach and education through community based organizations; and proposed partnership with Los Angeles County for enforcement operations.

With this Information Item, staff has included a more detailed outline of our proposed recommendations, with a brief discussion of potential alternatives to those recommendations which will be included in our final staff report (Attachment I). At the January 12, 2015 meeting, staff will present an ordinance based on these recommendations, and will prepare ordinance language for alternatives. Within each issue area, Council will have the option to adopt staff's recommendation or replace that recommendation with alternative language.

Staff will include this information item with its January 12 report to Council, and it will serve as the basis for discussion of stakeholder outreach in that report.

**Prepared By:** Stephanie Lazicki

### **Attachments**

- A. Santa Monica Neighborhood Restaurant Coalition (SMNRC) Service Charge Recommendation
- B. Chamber of Commerce Minimum Wage Position
- C. Santa Monica Travel & Tourism Survey and Report
- D. Unite Here Local 11 Service Charge Recommendation
- E. Restaurant Opportunities Center Los Angeles (ROC LA) Service Charge Recommendation
- F. Housing Commission Letter

- G. Hotel Associations Wage Response
- H. Community Meeting Comments
- I. Staff Recommendations



**Suggested Edits to the Santa Monica Minimum Wage Ordinance  
11.10.15**

**FROM THE ORDINANCE:**

**DEFINITION OF SERVICE CHARGE:**

*(h) "Service charge" means all separately-designated amounts charged and collected by an employer from customers that are for service by employees or benefits to employees, or are described in such a way that customers might reasonably believe that the amounts are for those services or benefits, including but not limited to those charges designated on receipts, invoices, or billing statements under the term "service charge," "delivery charge," "portage charge", "health care surcharge," or similar language.*

**SERVICE CHARGE CLAUSE:**

**4.65.050 Service charges.**

*(a) Service charges shall not be retained by the employer but shall be paid in their entirety by the employer to the employee(s) who performed services for the customers from whom the service charges are collected. No part of these amounts may be paid to supervisory or managerial employees. The amounts shall be paid to the employee(s) equitably and according to the services that are or appear to be related to the description of the amounts given by the employer to the customers. The amounts shall be paid to the employee(s) in the next payroll following collection of the amounts from customers.*

*(b) This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for an employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to customers*

**FOR REFERENCE: DEFINITION OF SERVICE CHARGE FROM ORDINANCE:**

*(h) "Service charge" means all separately-designated amounts charged and collected by an employer from customers that are for service by employees or benefits to employees. or are described in such a way that customers might reasonably believe that the amounts are for those services or benefits. including but not limited to those charges designated on receipts. invoices. or billing statements under the term "service charge." "delivery charge." "portage charge", "health care surcharge," or similar language.*

**SMNRC NOTES**

**'But not limited to'** is scary language. What if one clearly says: "Air Conditioning" fee?

**'Delivery charge'** should be taken out. Most restaurants that use online delivery platforms like Eat24, GrubHub and LABite charge a 'Delivery Charge', but it is typically not retained by the restaurant. Instead this amount is passed straight through to the delivery company. In other cases, it's used to pay for the packaging and maintenance of the delivery program itself. This is an example where this charge is assessed in addition to providing an opportunity for people to collect tips.

**'Similar Language'** is also too broad.

## RECOMMENDED SERVICE CHARGE LANGUAGE

### VERSION 1:

4.65.050 Service charges.

(a) Service charges, if assessed and specifically labeled “*Service Charge*”, shall be distributed to the employee(s) or general group of employees who performed service(s) for the customer(s) from whom the service charge(s) were collected within a particular payroll period.

Any non-salaried employee may be the recipient of “service charge” fee(s).

These amounts shall be paid to the employee(s) equitably, as decided upon by the employer, and in consideration of the general service(s) that are, or appear to be related to the description of the amounts described by the employer to the customer(s).

These amounts shall be paid to the employee(s) within the next payroll cycle following the collection of the amounts from customer(s).

Other “Surcharges”, to be used at the discretion of the employer, may be assessed by a business on a bill of sale provided the title of such surcharge is described in such a way that customers might easily and reasonably deduce what the charge is for, or to whom it will be given.

(b) This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for an employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to customers.



## **A Minimum Wage Plan That Empowers Both Businesses and Employees**

Among the most important issues facing Santa Monica today is the question of whether and how to raise the minimum wage to \$15/hour over the next five years. The City's plan will likely mirror the wage increases recently adopted by the City and County of Los Angeles, and under consideration in a number of neighboring cities. The City Council, the business community and advocates on either side of the issue have been exploring this topic for months.

The Chamber encourages Santa Monica to implement a regionally consistent minimum wage. We urge the City Council to approve an ordinance that treats all businesses equally and allows them the flexibility they need to adapt to operate successfully.

Part of the Chamber's core mission is to ensure that Santa Monica continues to create, attract and maintain good-paying jobs that allow people to thrive in our community and invest in our city's future. An ordinance that provides fair wages for employees and offsets the impact of implementation on our local employers can make that reality possible.

Many of our over 1,000 members have expressed concerns about the specifics of implementation. We conducted a member survey to gather data about the business community's concerns. Among the top takeaways are:

- 63% of businesses fear they may need to raise their prices
- 55% worry about having to cut employee hours
- 37% fear they may have to lay off employees
- 57% worry that the law will have unintended consequences, such as higher rates of youth unemployment or a decrease in available jobs for disadvantaged Santa Monicans

We know how difficult it is these days to thrive in a competitive marketplace, which is why the Chamber has been at the forefront of these discussions. That said, we also understand the need for a regional approach, to keep Santa Monica attractive to a quality workforce. With robust education and sensible implementation we can adopt a minimum wage ordinance that supports our lowest earners without forcing businesses to close their doors.

With these factors in mind, the Chamber of Commerce offers the following recommendations to the City, in hopes of crafting the most sensible minimum wage ordinance possible:

1. Adopt a minimum wage that is consistent with other local municipalities, allowing Santa Monica to remain competitive in the evolving marketplace.
2. Allow for a flexible service charge model under which restaurants, hotels and other entities would retain the authority to collect service charges in a transparent manner, distribute those charges as appropriate among both front- and back-of-house staff, and put those funds towards expenses that directly benefit employees. While some restaurants may choose to continue with the current tipping model, others will choose to transition to a service charge model that allows them more flexibility in providing truly fair compensation for their employees. These restaurants—a vital part of our community, who share our progressive values—should be supported in their efforts to create a more equitable service charge model, consistent with other restaurateurs across the country.

We also ask that the adopted language recognize that some service workers may also have a supervisory role, and should not be excluded from receiving money collected as a service charge.

3. Implement a sick-leave policy that grants a total of five paid sick days annually (the amount currently under discussion in Los Angeles) for full-time employees. This balances the need to protect workers' and customers' health with the many other demands placed on employers, which will only increase with the minimum wage hike.
4. Work closely with local businesses that are employers of seasonal workers to draft specific language exempting seasonal workers, which is critically important in Santa Monica's tourist economy. Additionally, the City should expand the age of the youth-based reduction (85% of minimum wage for the first 160 hours worked) to employees 21-years-old and younger; the current age range of 14-17 excludes the large majority of young people employed by Santa Monica businesses. Both of these provisions would help prevent the unintended consequence of disincentivizing youth employment. The Chamber of Commerce recognizes the importance of protecting young people's gateways to lifelong employment.
5. We oppose a hotel specific wage because we believe more study is necessary regarding the impacts of a large, immediate increase in wages. If the city is determined to move forward, we hope they will work with local hotels to establish a fair phase in model.
6. Adopt a minimum wage that treats all employees and businesses fairly. We are concerned that the proposed "union supersession" or union exemption would unduly burden or target businesses without collective bargaining agreements.

By incorporating these suggestions, the City has an opportunity to create a minimum wage law that allows both businesses and employees to thrive. We hope that our City leaders strongly consider these recommendations, which carry the weight of hundreds of Santa Monica businesses—employees proudly included. Let's leave the politics behind and adopt a fair minimum wage increase that truly has the best interests of all Santa Monicans at heart.



# Hotel Living Wage Survey Responses & Collected Data Report

**Presented to Santa Monica City Staff**

*By Santa Monica Travel & Tourism  
December 4, 2015*



## Contents

- I. Summary Findings
- II. Overall Informational Theme
- III. Options to Consider
- IV. Who is SMTT?
- V. Appendix



### **Summarized Feedback Findings**

- The timeline is too rushed to properly provide adequate feedback on the negative or positive impacts of a required hotel living wage.
- The majority of respondents have indicated that a required hotel living wage ordinance would have a negative impact on their properties-operations bottom line.
- Many hotel properties are currently offering benefits in addition to their wages to retain quality staff.
- Service charges may cause confusion with consumers as well as employers and employees. Administrative fees as it relates to catered events must be addressed.
- Hotels with a lower ADR may be impacted first by losing staff to hotels that may be required to pay higher wages, potentially forcing the closure of affordable & historic properties.
- Timing of implementation needs to consider impacts to employees and businesses.
- Increased wages will increase pricing which could result in a loss of business in Santa Monica to other destinations that do not yet have a hotel living wage.
- Education and enforcement require more attention before an ordinance is implemented.

### **Overall Themes**

The overall theme is negative while majority agree wages should increase. There is a concern over loss of business, quality of service, turnover and rushed timeline to put a hotel living wage in place without additional historical data to compare too.

### **Options To Consider**

The following are options to consider when moving forward.

- Creating an education and enforcement plan prior to passing & implementing the ordinance.
- Writing up separate small and large business impact forecasts.
- How to handle customer confusion.
- Holding off on passing a plan until additional historical data is available as to the financial impacts to Santa Monica.
- A tiered approach to the wage based on room inventory and ADR.
- A phased timing approach.



### **Who is SMTT?**

Santa Monica Travel & Tourism is a private, non-profit corporation formed in 1982 and is funded by the City of Santa Monica's general fund and the Tourism Marketing District assessment. Under contract to the City of Santa Monica, the purpose of SMTT is to increase visitor expenditures, tourism revenues and local employment opportunities through promotion of Santa Monica as a travel destination.

Santa Monica's vital travel continues to be an economic engine that injects \$1.72 billion dollars into the community, employing 13,700 people and generating \$45.5 million in hotel tax revenues for essential community services.

### **City Staff Request**

Santa Monica City staff has requested additional information on the impact of a potential Living Wage and Hotel Living Wage ordinance. Santa Monica Travel & Tourism has been gathering information to provide feedback from the Santa Monica Hotel Community as it relates to a potential ordinance requiring a hotel living wage in the City of Santa Monica. Santa Monica Travel & Tourism holds no position, only serving both parties as an information gatherer. Timing should be viewed as a critical component of the overall strategy and approach for both the minimum and living wages. Santa Monica is beginning to build a reputation as an expensive place to visit and stay. With an increase in wages it will inevitably create higher menu prices and higher hotel room rates and possibly limit accessibility to the Santa Monica experience for domestic and international visitors alike.

Currently we have a good balance of corporate and affordable small independent restaurants, hotels, attractions and retailers who have grave concerns that their businesses will survive especially with the increases for many in rents, payroll, payroll taxes and workmen's comp fees. The timing and phasing of the ordinance will have a strong impact. The more time businesses have to make internal adjustments, the higher chance they have of survival and to the overall success of the destination. Customers may push back on price increases and select our competing regional destinations that will not be increasing pricing such as Beverly Hills, Marina del Rey, and West Hollywood. It is difficult to project the potential loss of revenues from the visitor and for businesses and taxes to the city, as this is a new territory for consumers. But again, by watching and analyzing Los Angeles successes and failures we will be in a better position for overall continued success.

The hospitality industry cares about their employees and we believe the vast majority is in support of an increase in wages, however, how we get there and



when they are implemented must be carefully considered. With Los Angeles still in the midst of their phase-in, it would be wise for Santa Monica to watch how the minimum and living wage increases impacts Los Angeles businesses and employment. With the second phase of L.A. not taking place until July 2016 we would propose that Santa Monica not implement a hotel Living Wage until January 2017, this allows the trial and errors of the Los Angeles ordinance to be reviewed and corrected in the Santa Monica ordinance. This timing will allow both small and large businesses to organize their operational changes and the increase in budgets that will occur. It is important that the final ordinance should include language that provides for frequent staff review from an analytical approach, evaluation and/or allow for adjustments to the ordinance if needed.

#### **Data Sources**

We have spent time compiling Data from an online survey sent to all hotel properties, held a series of conference calls, hosted a hotel general managers meeting along with City of Santa Monica staff, attended Santa Monica Chamber hosted meetings, discussed at Board of Director, Tourism Marketing District Committee meetings, made many calls and held in-person meetings. It is important to note that not all hotels have responded and may not be represented.



## Appendix – Gathered Data & Response to Survey Results

### What additional benefits do you offer employees?

The following information is from various hotels regarding benefits many hotels now offer but are not limited to:

- Medical, Dental, 401K, Life insurance, LTD, STD, free lunch once per shift, free beverages all day, incentive programs at Front Desk, incentive program for rewards enrollments, holiday party, monthly appreciation lunch/event, free on site parking
- Full family medical, dental insurance, vision and life insurance. Free bus pass for FTE, vacation and sick days, meal allowance, parking allowance, employee reward programs, Thanksgiving allowance and Holiday bonus.
- Full CBA benefits. Free parking, employee hotel rates in brand hotels, free meals and beverages, employee landmark anniversary gifts, employee of the month, manager of quarter, holiday parties, breakfast buffets for colleagues, lucky draws for prizes.
- We provide our employees with a great medical plan (we pay 80% of premium), \$20 co-pay, no deductible and max out of pocket of \$1,500. We provide free meals, have a dental and vision plan, give 10 days vacation plus 6 days holiday pay. Effective July 1 2015, now give 3 days sick pay. Discounted rom stays.
- We offer employee events, holidays and summer. Free meals and beverages and for FTE free bus passes. Not sure we will be able to afford train passes.

### Impacts to Employee Retention And/or Performance

Do you see an impact to employee retention and or performance?

- Employee retention is often a challenge due to the costs of commuting to work and the high cost of living in the area. The respondents indicated that a small minority of employees are Santa Monica residents. Many are concerned that a phase in of Living Wage increase may cause an unforeseen challenge in employee retention for those properties paying a lower wage i.e. why not go across the street to work at X hotel where they are paying the higher wage? What effects it may have on employee morale are also important to consider. On the other hand a phase in allows for budget and operational changes that will be required. Careful consideration and caution should be used so that some employees don't perceive that they are "less valued" by their employer than the hotel X employee if a phase in is by size, room rates or geographic area are used. Also stated was a potential difference in wages of an employee at a non-hotel business. Why is a dishwasher at a hotel paid more for the same job a dishwasher at a restaurant performs across the street? What will that do to employee morale, retention and customer service?

### Potential Financial Impact To Your Hotel

When asked what the potential financial impact on your hotel if a Living Wage is passed?

- Impact to operations can relate to "roll up" costs not yet determined.
- The impact to my hotel is estimated to be \$806k.
- I have projected a 15-20% increase.
- 30-40% increase for certain.
- Undetermined as we are under CBA, however it will affect future negotiations of wage thresholds for tipped and non tipped. Creates business environment that may lead to shut down of services
- The impact to our restaurant would be over \$500,000 on an annual basis in increased payroll costs (wages, payroll taxes, workers comp, etc.) We would not be able to pass

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these costs onto our customers, as they would be able to just go to a restaurant down the street that would not be paying these wages.

- We will see greater year over year increases in 2nd year much larger than 2.5% typical budget thresholds. Will create further pressure on operational profitability & customer service.

## Do You Use Third Party Vendors?

- When asked do you have 3rd party vendors leasing space or contracted outside services i.e. housekeeping, valet etc. that may be affected and then required to also pay the minimum and living wage? If so please offer a brief explanation of impacts.
- We have a third party valet company and a third party security company.
- Laundry outsourced Landscaping outsourced Overnight cleaners outsourced Security outsourced.
- We outsource business center, night security and valet parking.
- Not currently. We have considered bringing in valet parking on an outsourced basis but would never be able to if we these employees would have to be paid \$15.37 plus tips. My guess is that any valet company would need to charge us at least \$25 per employee hour.

## Do You Sub-Lease

When asked the question of do you have sub lease's "under your roof line" that may be impacted with a hotel Living Wage?

- Respondents mentioned rental car companies, bike rental, retail and business centers.

## Hotel Wage - Set Living Wage at L.A. level \$15.37 & Establish Appropriate Room Tiers/Threshold

Comparable tiers for Santa Monica phase in. Feedback in this area ranges due to the unknown cause and effects. On one hand moving all properties to one wage creates an even playing field in the arena of employee retention and customer awareness for all properties vs. some paying a lower wage than their neighboring hotel. On the other hand an increase to payroll and benefits will result in substantial budget increases for many. Below are scenarios to consider.

Inventory by number of hotel rooms is broken down below:

200 rooms + (5 properties)

100 room + (8 properties)

51-99 rooms (6 properties)

1-50 rooms (18 properties)

**Total of 37 properties** (+1 hostel with 260 beds)

*As one can see the majority of our hotels fall into the 1-50 room properties but rates of these properties vary widely. From under \$100 to \$400 ADR*

**Should Santa Monica follow LA's lead with the number of hotel room's designation it could do as follows:**

- A) No phase in all hotels pay \$15.37 as of January 2017

*This may help those smaller and more affordable properties the time to adjust to implementation of a Hotel Living Wage and to budget and make the needed operational changes.*

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B) 100 rooms + phase in July 2016 at \$13.37 increase to \$15.37 in July 2017

*100 rooms – Phase in January 2017 at \$13.37 increase to \$15.37 in July 2017*

## **This places all hotels paying same wage by July 2017**

C) Look to the current TMD tiers by hotel rate average daily rate (ADR) vs. number of guest rooms with three levels of phase in over an 18 month time period.

ADR \$300+ (11 properties) July 2016  
ADR \$200+ (9 properties) Jan 2017  
ADR \$100+ (12 properties) July 2017  
**Total of 32 \*properties**

*\*Note the absence of 5 non -TMD hotels due to rates below \$100 (based on 2014 performance) and 1 hostel*

## **Comments From Respondents**

- No phase in all pay the same. This would be the most impactful financially but would level the recruitment and retention field.
- By ADR similar to the tiers for the TMD is our preference.
- Do not agree with a hotel living wage, but if approved should be same as Los Angeles - only for hotels with 150 or more rooms. Possibly 125 or more rooms but no way for hotels under 125. – How do they retain employees?

## **Question posed do you believe the wage increases will have an impact on the visitor economy?**

- If a hotel living wage was to go into effect and our restaurant was affected, we would probably eliminate all server positions (15 employees). You would just order at a cashier when you come in and then a runner would deliver you food. I see a big impact on service levels if this were to go into affect.
- Yes, we will not be able to provide the level of services we currently offer.
- Yes higher prices will most likely relate to fewer customers for all here in Santa Monica.
- Yes, it is not an even playing field in the region.
- Of course it will, we are already looked at as expensive this will just push prices up and provide for fewer customers.
- Santa Monica is a very unique community that feels like we are merging into Los Angeles. With surrounding competition and air b n b still stealing market share creates an unfair business climate. What is the city doing to help us survive? Any tax breaks or business license fee discounts?
- Yes, customers who learn that a hotel worker makes more than a restaurant employee may chose to spend their money elsewhere in a community that has a fair living wage for all.
- Yes.
- Absolutely! We area already considered an expensive city and this will reinforce people's feeling.
- Yes.
- Yes. Hotels will be forced to raise rates. Hotel will lose group business to hotels in other Cities that do not have a living wage (San Diego, Anaheim, Marina Del Rey, etc.) and that do not have to pass on their higher wage costs to their guests.

# SANTA MONICA

TRAVEL & TOURISM

## Service Charges- question posed- what do you feel is the best way to achieve transparency for the customer?

- Services charge, Santa Monica COC board recommends: Allow for a flexible service charge model under which restaurants, hotels and other entities would retain the authority to collect service charges in a transparent manner, distribute those charges as appropriate among both front- and back-of-house staff, and put those funds towards expenses that directly benefit employees. While some restaurants may choose to continue with the current tipping model, others will choose to transition to a service charge model that allows them more flexibility in providing truly fair compensation for their employees. These restaurants—a vital part of our community, who share our progressive values—should be supported in their efforts to create a more equitable service charge model, consistent with other restaurateurs across the country.
- **Do you support this recommendation?**
- I would say that the menu would just need to clearly define what any service charge goes to. – Leave to employer.
- Yes.
- Seems reasonable, yes.
- Danny Meyer has a solid booming platform and established sales growth with his group. His results of transparency and feedback below:

*The Modern (via [Yelp](#))*

*Celebrity restaurateur Danny Meyer started implementing his [no-tipping policy](#) at The Modern in Midtown on Thursday. To make up for the lost tip money, Meyer increased menu prices. The change, meant to stabilize staffers' pay, prompted [a flood of applications](#) to the Museum of Modern Art eatery, and is being closely watched across the restaurant industry. The [New York Post](#) visited The Modern on day one of the gambit, and found at least two tables that couldn't resist the conditioning of a lifetime of ordering from wait staff making less than minimum wage.*

*"We left a [\$20] tip," Monique Hohmann told the tabloid.*

*"We forced her," Hohmann said of her and her husband's server. "We left it and ran. [The server] was very polite and did not want to accept it, but we felt she had made such beautiful wine choices and she needed to be rewarded for her extra effort."*

*Diner Shawn from California said he tipped his usual 30 percent because he was suspicious of Meyer's worker-friendly claims.*

*"I'm a little opposed because I don't really know what's going into the hands of the staff," he said.*

*Meyer plans to enact the no-tipping policy at his 12 other restaurants by the end of next year.*

*"It's troubled me for 21 years that the tipping system is antithetical to creating a real profession for people who takes their jobs seriously," he told [The Telegraph](#). "You don't tip your doctor if they do a good job. You don't tip the airline pilot if the plane lands. It's actually a demeaning practice." Meyer plans to offer an online meal-rating system as a way of replacing the feedback of tipping and helping to assess who deserves a raise or promotion.*

*Other tables the Post spoke to on day zero of the new scheme were relieved to not have to tip—three are quoted, compared to the two who insisted on leaving extra.*

*As [Eater first outlined](#), nearly half of the items on The Modern's Bar Room menu are actually reduced in price under the new system, including the white truffle risotto, which is down \$10 to \$40. The average price increase, considering all the items is 6.3 percent, according to the blog. The tasting menu in the*

# SANTA MONICA

## TRAVEL & TOURISM

restaurant's main Dining Room is up to \$182 from \$138, and was raised \$10 earlier in the summer. Factored together, the increases total 20 percent.

A recent [Quinnipiac poll](#) shows that, despite their general willingness to pay more to support a wage increase for fast-food workers, New Yorkers love tipping and are against doing away with it to support better wages at sit-down eateries.

[Anthony Bourdain told us](#) he thinks Meyer's anti-tipping policy is "the way of the future." Jerry Seinfeld, whose last non-comedy job was as a waiter, opposes the change for selfish reasons. He [told Grub Street](#):

*Comedy-wise, I really like tipping. I like the arguments. I like the weirdness. I like the whispering — there's no tipping without whispering. How much should I give? It's a Living Wage done like it's illegal for some reason ... like if you tip a car valet or a bellman it all has to be done like we don't want to get caught doing this.*

Tips that are left at The Modern now have to be divvied up and doled out to eligible employees, according to [the New York Times](#). Union Square Hospitality Group executive Erin Moran told the paper before the launch that, yes, the company is really against tipping.

"We really want to strongly dissuade guests from leaving any extra gratuity," she said. "We really hope that we don't have to deal with it."

- Wording needs to be added to menus and banquets event orders to specify the amount of service charge that is paid out to the employees and the amount that is held by the hotel to cover administrative costs.
- I do not think we need to be even more transparent the customer has no role in adjudicating the manner in which we do business.
- The customer is not going to agree despite the disclosure on the bill or menu when they feel they have NO CHOICE or control when service levels fall below expectations. At the cost of the employer you need to do an informational campaign, website, marketing, open table, disclosure at time of booking.

### **What compliance burdens will a service charge put upon you the employer?**

- This will place greater operational burdens to manage. The ability for fair distribution will in fact hurt the employees in the end. It creates an unfair playing field for these establishments outside of this ordinance. Who will administer and there are no charges to offset the extra time in management. Who determines a combined role and who gets what amount back or front of house? So increase menu prices to not do service charges but pay more to retain talent.
- Clearly outline on bill what the service charge goes to and any admin fee is.

### **When posed the question-5 days for FTE do you support this position?**

- Paid leave: the Santa Monica Chamber of Commerce (COC) board is recommending: Implement a sick-leave policy that grants a total of five paid sick days annually (the amount currently under discussion in Los Angeles) for full-time employees. This balances the need to protect workers' and customers' health with the many other demands placed on employers, which will only increase with the minimum wage hike.
- We already exceed this amount with our benefits package.
- We already offer this benefit to our FTE.
- Under CBA agreement days given as sick will be incorporated into payout and total of PTO.

# SANTA MONICA

TRAVEL & TOURISM

- Yes. If the hours are not vested when accrued, you will have issue of employees taking sick leave when not sick, calling in very last minute, etc. Would prefer that hours be vested when earned so employees can be paid out hours versus just not showing up to work.
- Yes we support this.
- Yes

**When posed the question- Do you support this?**

- The Santa Monica COC is recommending: Work closely with local businesses that are employers of seasonal workers to draft specific language exempting seasonal workers, which is critically important in Santa Monica's tourist economy. Additionally, the City should expand the age of the youth-based reduction (85% of minimum wage for the first 160 hours worked) to employees 21-years-old and younger; the current age range of 14-17 excludes the large majority of young people employed by Santa Monica businesses. Both of these provisions would help prevent the unintended consequence of dis-incentivizing youth employment. The Chamber of Commerce recognizes the importance of protecting young people's gateways to lifelong employment.
- Does not apply to our business.
- Yes. Look at hotel seasonal jobs that invoice service of alcohol and requirements of being 21.

**When posed the question of Education and Enforcement: As there will be enforcement provisions in most ordinances, if you have any comments on cooperation in education and communication between city and businesses please provide thoughts here.**

- Where is the money coming from? What is being taken away to fund this? Not clear of staff available from city for this area.
- LA just formed an entire division what will that cost taxpayers?
- Why are we passing an ordinance with no plan of enforcement? Just like the air bnb not enough enforcement and it is costing hotels business and the city lost TOT.
- The Los Angeles Times recommended aligning all the various wage ordinances so there isn't a patchwork of laws and ordinances, making compliance that much more difficult on the employer community.
- Passing a similar ordinance could potentially open the city up to costly and completely avoidable legal action.
- A hotel living wage enforced only on hotels without a "CBA" will be very confusing. You could have a server making \$10 at a standalone restaurant, slightly more at a CBA hotel, and \$15.37 at a non-CBA hotel. There should be one City- Wide minimum wage for all businesses. Hotel industry should not be different than any other business.

# UNITE HERE! Local 11

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464 Lucas Ave., Suite 201 • Los Angeles, California 90017 • (213) 481-8530 • FAX (213) 481-0352

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December 1, 2015

*Via electronic mail*

Honorable Mayor and Councilmembers  
City of Santa Monica  
1685 Main Street  
Santa Monica, California 90401

Re: Suggested Revisions to Draft Minimum Wage Ordinance

Dear Mayor McKeown and Councilmembers,

We are very glad the Council is moving forward with strong minimum wage legislation, which we believe will serve as a model as the movement for decent wages grows in California and beyond.

This letter provides UNITE HERE Local 11's suggestions for revisions to the draft ordinance in the following areas:

1. Ensuring effective private and public enforcement of the ordinance
2. Providing employees with effective notice of their rights
3. Prohibiting employers from funding compliance with the minimum wage requirement by reducing other employee compensation or retaliating against workers for exercising their rights under the ordinance
4. Prohibiting employers from using mandatory service charges to undermine the ordinance's purpose of increasing worker wages
5. Prohibiting employers from artificially dividing up their businesses to exploit the ordinance's delayed wage increase schedule for businesses with 25 or fewer employees

We have separately conveyed to the Council our strong support for the addition of provisions to provide sick leave, to establish a minimum wage for the hotel sector parallel to that enacted by the City of Los Angeles, and to facilitate collective bargaining by allowing for supersession by bona fide union contracts.

We would be happy to discuss these issues further and provide materials or identify authorities the City may find helpful as it moves forward with this legislation.

## 1. Enforcement and Remedies

### A. Private Right of Action

We encourage the Council to include in the legislation a private right of action with a fee shifting provision allowing for a prevailing plaintiff to recover from an employer found in violation of the law. These provisions have been included in the vast majority of labor standards enactments in the last 50 years, including city, state, and federal laws, and they have been upheld every time they have been challenged.<sup>1</sup> Fee shifting, in particular, is crucial because, without it, underpaid low-wage workers will almost never find a lawyer willing to take their cases, as the sums lost usually do not cover legal time and expense.

We encourage the City to adopt the private right of action provision included Oakland's minimum wage statute, which states as follows:

Private Rights of Action. Any Person claiming harm from a violation of this Chapter may bring an action against the Employer in court to enforce the provisions of this Chapter and shall be entitled to all remedies available to remedy any violation of this Chapter, including but not limited to back pay, reinstatement and/or injunctive relief. Violations of this Chapter are declared to irreparably harm the public and covered employees generally. The Court shall award reasonable attorney's fees, witness fees and expenses to any plaintiff who prevails in an action to enforce this Chapter. Any Person who negligently or intentionally violates this Chapter shall be liable for civil penalties for each violation with a maximum of one thousand dollars (\$1000.00) per violation, the amount to be determined by the court. No criminal penalties shall attach for any violation of this Chapter, nor shall this Chapter give rise to any cause of action for damages against the City.

Oakland Municipal Code § 5.92.050 (G). Similar provisions are Los Angeles Municipal Code § 188.07(C) and San Francisco Administrative Code § 12R(7)(d).

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<sup>1</sup> As noted in our previous communication on this subject dated September 25, 2015, this is not only true of local wage ordinances Los Angeles City and County, Sonoma County, San Francisco, Oakland, Berkeley, Richmond, San Jose, but also of numerous state laws: *see, e.g.*, Cal. Labor Code sections 1194.5 (fee-shifting for state minimum wage); 218.5 (unpaid wages); 1062 (janitor retention); 2699(g)(Labor Code Private Attorneys General Act, aka "PAGA"); Cal. Gov. Code 12965(FEHA); Ariz. Rev. Stats. 23-364; Nev. Const. Article 15 sec. 16; New York Labor Law section 198. There are over 25 federal employment statutes with fee-shifting, including the FLSA (minimum wage and overtime), Title VII, WARN, ERISA, FMLA, ADA, and nearly all other anti-discrimination and anti-retaliation statutes. Indeed, many statutes in this field have added liquidated damages and penalties that the private party may recover either for themselves or for the government, as with FLSA (double damages) and PAGA. Most cases these days the employer hires at least one expert witness, forcing as a practical matter the employee to do so as well. A number of modern statutes such as FEE-IA and the Oakland minimum wage statute quoted on this page provide for recovery of this expense on top of attorneys' fees.

## **B. Public Enforcement**

Even with a private right of action, many violations of the ordinance will likely go unremedied without effective public enforcement. As you know, the City of Los Angeles has enacted legislation to create a new Wage Enforcement Division within a bureau of the City's Department of Public Works. See Los Angeles Municipal Code § 188.00 et seq. Modeled in part on San Francisco's highly effective Office of Labor Standards Enforcement, the new enforcement agency will investigate complaints of alleged violations of the City's minimum wage ordinance. The agency will have broad investigatory powers, including the authority to inspect workplaces, interview witnesses, and issue investigative subpoenas, and the ability to require employers found to have violated employee's rights to take rapid corrective action (within 10 days), subject to an administrative appeal process and judicial review. §§ 188.05-11. As with San Francisco's successful program, the City will partner with community organizations to undertake outreach to ensure that employees learn of their rights and to facilitate the submission of complaints. The County of Los Angeles is in the process of finalizing legislation for a similar program.

We encourage the City to develop a similar program of public enforcement, whether on its own or in collaboration with the City and/or County of Los Angeles. We understand that City staff are in dialogue with experts at UCLA who helped envision the City and County of Los Angeles's public enforcement programs regarding the sort of enforcement program that makes sense for Santa Monica and we encourage that important dialogue to continue. Whatever approach is settled upon, we encourage the City to include provisions for worker outreach via community organizations and unions. Model statutory language enabling such a program can be found in Los Angeles's minimum wage ordinance:

Outreach. The Division shall establish a community-based outreach program to conduct education and outreach to Employers and Employees. In partnership with organizations involved in the community-based outreach program, the Division shall create outreach materials that are designed for Employers and Employees in particular industries.

Los Angeles Municipal Code §188.13.

## **C. Employee Remedies and Administrative Fines**

We also encourage the City to include effective remedies and administrative fines for violations, as included in the City of Los Angeles's wage enforcement ordinance. Employee remedies in the Los Angeles ordinance are as follows:

A. Restitution and Penalties. Every Employer who violates this article, or any portion thereof, shall be liable to the Employee whose rights were violated for any

and all relief, including but not limited to the payment to each Employee of back wages unlawfully withheld and an additional penalty of \$100 for each day that the violation occurred or continued. A violation for unlawfully withholding wages shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full. For retaliatory action by the Employer, the Employee shall be entitled to reinstatement and a trebling of all back wages and penalties.

B. Interest. In any administrative or civil action brought for the nonpayment of wages under this article, the Division or court, as the case may be, shall award interest on all due and unpaid wages and penalties at the rate of interest specified in Subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

Los Angeles Municipal Code § 188.07.

Los Angeles's ordinance also sets forth administrative fines for violations of specified obligations set forth in the ordinance. These include fines in the amount of \$500 for a failure to post a notice of the Los Angeles minimum wage rate; allow access to payroll records; maintain payroll records or to retain payroll records for four years; allow access for inspection of books and records or to interview employees; provide the employer's name, address, and telephone number in writing; and cooperate with Wage Enforcement Division investigation. A fine of \$1000 is applicable for retaliation against employees for exercising their rights under the ordinance. § 188.08.

## **2. Notice Requirement**

We encourage the Council to add a provision to the ordinance requiring employers to post a notice outlining employee rights under the ordinance. Such notice is an essential step to ensure workers have access to information concerning their rights under the law. Provisions for employee notice have been included in the vast majority of minimum labor standards laws,<sup>2</sup> including the City of Los Angeles's minimum wage ordinance, which provides as follows:

Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works, the notice published each year by the Division informing Employees of the current minimum wage rate and of their rights under this article. Every Employer shall post notices in English, Spanish, Chinese

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<sup>2</sup> See, e.g., U.S. Department of Labor, Workplace Poster Requirements for Small Businesses and Other Employers, <http://www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm> (accessed Nov. 5, 2015); California Department of Industrial Relations, Workplace Postings, <http://www.dir.ca.gov/wpnodb.html> (accessed Nov. 5, 2015).

(Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian and Farsi, and any other language spoken by at least five percent of the Employees at the workplace or job site. Every Employer also shall provide each Employee at the time of hire, the Employer's name, address, and telephone number in writing.

Los Angeles Municipal Code § 188.03(A).

### **3. Unlawful Practices Provision**

Section 60 of the draft ordinance, “Unlawful Practices,” states:

It shall be unlawful for an employer or a City contractor working on a City contract to reduce the hours of, refuse to hire, discharge or otherwise discriminate or take adverse action against any employee or other individual in order to pay wages less than the minimums established under this Chapter.

We assume the intent of this draft language is to bar employers from (1) prohibiting retaliation against employees seeking to exercise their rights under the ordinance, and (2) taking actions which have the effect of undermining the economic benefit the ordinance is intended to provide low-wage workers. We strongly agree with both goals. As to the latter point, unless legally barred from doing so, there is a real danger that employers may finance the wage improvement by cutting non-wage benefits or increasing prices charged workers for such things as meals, uniforms and parking, such that the ordinance will not produce an increase in workers’ take home pay.

Both objectives have been effectively addressed in Oakland’s recently enacted minimum wage ordinance, which provides as follows:

1. A Person shall not discharge, reduce the compensation of nor otherwise discriminate against any Person for making a complaint to the City, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Chapter. Within one hundred twenty (120) days of an Employer being notified of such activity, it shall be unlawful for the Employer to discharge any Employee who engaged in such activity unless the Employer has clear and convincing evidence of just cause for such discharge.
2. No Employer may fund increases in compensation required by this Chapter, nor otherwise respond to the requirements of this Chapter, by reducing the compensation of any non-management Employees nor by reducing the pension, vacation, or other non-wage benefits of any such Employees, nor by increasing charges to them for parking, meals, uniforms or other items. If an Employer makes such adverse changes after the filing of the notice to circulate the petition giving rise to this Chapter but before this Chapter has

become effective, then upon this Chapter's effective date, such Employer shall restore the conditions of the status quo ante.

Oakland Municipal Code § 5.92.020(A). We encourage Santa Monica to adopt this language.

#### **4. Service Charges**

We are very pleased the City intends to include language in the ordinance requiring employers that impose mandatory service charges on their patrons to pass the entire service charge on to the workers who performed the services for which the service charges are billed. This provision is critical, because, without it, employers may respond to the minimum wage increase by charging patrons mandatory service charges—which customers tend to assume goes to the employees who served them, leading them not leave tips—but which the employer in fact keeps for himself. Allowing this practice to occur would undermine the ordinance's benefit for low-wage workers.

As you know, the Cities of Los Angeles, Long Beach, and Oakland, among others, have addressed this problem with legislation specific to the hotel industry. The City of Santa Monica would be, to our knowledge, the first city to enact a service charge law that is applicable for all industries. With this in mind, we have collaborated with the primary other labor/advocacy organizations working in tipped industries in Santa Monica— Restaurant Opportunity Center of Los Angeles and CLEAN Carwash Campaign—to develop the below proposed language that we believe will effectively protect the interests of workers across the industries in which we work, while also reflecting differences between the industries.

Two modifications of the draft ordinance are of particular note. First, we have added a provision to prohibit employers from crediting service charges toward their compliance with the City's minimum wage law. Crediting tips against wage obligations, such that an employer can pay its employees less than the minimum wage so long as tips make up the difference, has long been unlawful under California Labor Code Section 351. The language proposed here would prohibit the same practice with respect to service charges, thereby closing a significant loop hole which could be used to seriously undermine the Council's goal of raising workers' wages.

Second, we have added provisions providing that non-management and non-supervisory employees who contribute to the service for the patron for which the service charge is collected, including those who do not provide direct service, may share in the distribution of the service charge. This tracks the analysis with regards to the pooling and distribution of tips in the key California Court of Appeals decision on this issue, Etheridge v. Reins Int'l California, Inc., 172 Cal. App. 4th 908, 921 (2009). An exception is provided for designated classifications in the hotel sector which tend to operate as distinct departments (banquet, room service, and bell), where service charges may be distributed to employees who provide direct service. The language with regard to these classifications closely tracks the hotel-specific service charge statutes of Los Angeles,

Long Beach, and Oakland. See Los Angeles Municipal Code § 184.00 et seq; Long Beach Municipal Code § 5.48.020(b); Oakland Municipal Code § 5.92.040 (also covering restaurants). Under our proposed language, employers with an existing practice of pooling and distributing service charges to employees other than those specified may continue to do so.

Additionally, we have added provisions requiring transparency to employees with regard to the distribution of service charges and the amounts collected and distributed each pay period; requiring the timely payment to workers of service charges; and prohibiting deductions from employee distributions due to credit card charges. We have also modified the proposed definition of service charges to provide additional examples of the types of charges that will be considered service charges.

Our proposed language is as follows:

- (a) Service charges shall not be retained by the employer but shall be paid in the entirety by the employer to the employee(s) who performed services for the customer from whom the service charges are collected. No part of these amounts may be paid to supervisory or managerial employees. No employer or agent thereof shall deduct any amount from wages due an employee on account of a service charge, or require an employee to credit the amount, or any part thereof, of a service charge against and as a part of the wages due the employee from the employer.
- (b) Amounts collected as service charges shall be paid to employee(s) equitably and according to the services that are or appear to be related to the description of the amounts given by the employer to the customers. Non-management and non-supervisory employees who contribute to the service for the patron for which the service charge is collected, including those who do not provide direct service, may share in the distribution of the service charge.
- (c) Notwithstanding the foregoing:
  - 1. Amounts collected for banquets or catered meetings shall be paid to the employees who actually wait on guests at the banquet or catered meeting;
  - 2. Amounts collected for room service shall be paid to the employees who actually deliver food and beverage associated with the charge; and
  - 3. Amounts collected for portage service shall be paid to the employees who actually carry the baggage associated with the charge;

Provided, however, that employers which had as of November 30, 2015 an existing practice of pooling and distributing these service charges to non-management/non-supervisory employees other than the above-listed employees may continue such practice to the same extent.

- (d) Each employer shall disclose in writing to each employee its plan of distribution of service charges to employees and shall report to employees on each payroll date on the amount of service charges collected and amounts distributed to employees for the pay period in question.
- (e) The amounts shall be paid to the employee(s) no later than the next payroll following collection of an amount from the customers, except that any service charges collected in cash shall be paid to employees at the close of business on the day the charges are collected.
- (f) An employer that permits patrons to pay service charges by credit card shall pay the employees the full amount of the service charge that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company.
- (g) This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for an employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer.

Definitions:

"Service Charge" means all separately-designated amounts charged and collected by an employer from customers that are for service by employees or benefits to employees, or are described in such a way that customers might reasonably believe that the amounts are for those services or benefits, including but not limited to those charges designated on receipts, invoices, or billing statements under the term "service charge," "table charge," "delivery charge," "portage charge," "automatic gratuity charge," "health care surcharge" or similar language.

## **5. Single Integrated Enterprise**

Section 15(c) of the draft ordinance allows employers with 25 or fewer employees to increase wages according to a slower schedule than larger employers. The inclusion of this dual wage schedule creates a danger that employers with more than 25 employees may divide up their business into technically separate entities that each have less than 25 employees in order to avoid paying the higher wage that would be otherwise required. For example, a hotel employer might create separate limited liability companies for its housekeeping, restaurant, and banquet service departments. Schemes of this sort to defeat the intent of the ordinance may be lawful unless the draft ordinance is revised to bar them.

We recommend that the Council address this problem by incorporating language providing that the higher wage schedule applies to any business entity that is a component of an integrated business enterprise with more than 25 employees. This

approach, originally developed in the context of the federal Fair Labor Standards Act, is frequently employed in statutes like the present draft ordinance where wages or benefits are keyed to the number of employees in a business. We propose adding following language to Section 15:

Multiple employers that form a single integrated enterprise shall be considered a single employer under this section if so deemed under the Fair Labor Standards Act, 29 USC § 203(r)(1).

This language is adapted from a similar provision in a section of Oakland's City Charter, § 728, which provides for living wages for employees at the Port of Oakland. A similar provision, though one which we suggest is unnecessarily complicated, can be found in Seattle's minimum wage law, at Seattle Municipal Code § 14.19.020(B).

Thank you for considering our views on these matters. We look forward to continued dialogue with the Council as it moves forward with this crucial legislation to improve the lives of the City's low-wage employees. Please contact me if you have any questions or we can provide additional information. I can be reached by telephone at 213-481-8530 ext. 233 and by email at [jblasi@unitehere11.org](mailto:jblasi@unitehere11.org).

Sincerely,

*/s/ Jeremy Blasi*

Jeremy Blasi  
Staff Attorney



**The Restaurant Opportunities Center of Los Angeles**  
**1730 W. Olympic Blvd. #300, Los Angeles, CA 90013**  
**213-380-1020**

December 11, 2015

Honorable Mayor, City Attorney and Councilmembers  
City of Santa Monica  
1685 Main Street  
Santa Monica, California 90401

**RE: SERVICE CHARGES IN MINIMUM WAGE ORDINANCE**

Restaurant Opportunities Center of Los Angeles (ROC-LA) is a nonprofit worker center dedicated to improving wages and working conditions in LA County's restaurant industry. We outreach in Santa Monica and West Los Angeles, among other restaurant-dense locations in the county.

ROC-LA is a local affiliate of Restaurant Opportunities Centers United (ROC-United), a national nonprofit organization that includes 13,000 low-wage restaurant worker members, 100 employer partners, and several thousand consumer members in New York, New Orleans, Southeast Michigan, Chicago, Miami, Los Angeles, Washington, DC, Philadelphia, the Bay Area, Houston, Boston, and Seattle.

Founded in 2009, ROC-LA provides:

- counseling regarding wage theft, including assistance with individual and workplace-wide claims, resulting in successful recovery of over half a million dollars in unpaid wages, as well as improved workplace conditions, such as paid leave
- workforce development, including food handlers certification and bartending/fine dining classes
- technical assistance to employers, such as guidance on drafting employee handbooks and compliance with federal, state and local employment law
- leadership development for restaurant workers to lead grassroots policy change, including successful passage of \$15 minimum wage and comprehensive wage theft enforcement in LA City and unincorporated LA County
- healthcare cooperative in partnership with St. John's Well Child and Family Center
- free legal clinic in partnership with Gordon, Edelstein, Krepack, Grant, Felton & Goldstein, LLP (GEK Law)

ROC-LA supports service charges provisions that are transparent, fair and enforceable. The intent of raising the minimum wage is to lift Santa Monicans out of poverty -- it is imperative that the policy protect vulnerable workers such as the tipped workforce.

Tipped workers are overwhelmingly female and people of color. They work in the fast-growing service sector, including restaurants, carwashes, and nail salons. Santa Monica's tipped workforce likely mirrors L.A.'s, where the median wage of tipped workers, including tips, is \$11.86/hour:<sup>1</sup>

- 56% of tipped workers are outside of the restaurant industry, in the hospitality, carwash, nail and beauty salon, and massage industries.
- 62% of L.A.'s tipped workers make below than \$25,000 per year:
  - 63% of massage therapists
  - 70% of beauty and personal appearance workers
  - 70% of restaurant workers
  - 83% of coffee shop and lunch counter workers
- Nationally, women comprise 70% of tipped workers and 63% in L.A. They earn less than their male counterparts. 70% of all female and 56% of all male tipped workers make less than \$25,000.
- 71% of all Latino and Asian Pacific Islander tipped workers make less than \$25,000 per year.

Additionally, tipped workers are uniquely vulnerable to wage theft. Some employers illegally pay their employees below the minimum wage, justifying their actions with the logic that consumers pay employees through tips. When employees make the minimum wage, employers and managers sometimes feel justified in skimming tips. In fact, UCLA found that about 1 in 5 tipped employees in L.A. experience tip stealing.<sup>2</sup>

ROC-LA urges service charge provisions to protect this vulnerable workforce.

## **TRANSPARENT**

Service charges must be transparent to consumers and employees. In 2013, San Francisco's City Attorney found that restaurants charged customers \$14 million in extra fees, ostensibly to cover employee health care, but that two-thirds of that money, \$9 million, was used for other purposes,

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<sup>1</sup> EEO Tabulation of American Community Survey 5-Year Estimates.: <http://www.census.gov/people/eeotabulation/>

<sup>2</sup> Milkman, Gonzalez and Narro. *Wage Theft and Workplace Violations in Los Angeles*. Institute for Research on Labor and Employment, University of California, Los Angeles. 2010.

in violation of the law. This prompted the City Attorney to pose the question, “Is profiting from health care surcharges a form of consumer fraud?”<sup>3</sup>

Transparency to employees can be achieved through a regular report to employees summarizing how much is collected in service charges and how they are distributed, by percent or dollar amount. Transparency to consumers can be achieved by a broad, clear definition of “service charge” that assures consumers that their money goes to employees. ROC-LA supports the working definition of “service charge” from the September 2015 draft ordinance: “all separately-designated amounts charged and collected by an employer from customers that are for service by employees or benefits to employees, are or are *described in such a way that customers might reasonably believe that the amounts are for those services or benefits*” (emphasis added). Service charge protection should cast a broad net and acknowledge all the different names that “service charge” can go by.

Transparency facilitates faster and more accurate enforcement. ROC-LA has first-hand experience recovering tens of thousands in stolen tips through the State Labor Commissioner. At one restaurant, the employer maintained a “tip report” to summarize gratuities collected for large events. One employee found the reports and discovered that the employer was illegally skimming between 10-40% of the gratuities after each event. Employees were able to accurately calculate tip stealing on their wage theft claims based on these reports. In contrast, for other restaurants in which employers routinely stole tips, employees, state investigators and organizers had to undergo a lengthy process of estimating the amount of tips stolen, based on individual interviews and reconstructing years’ worth of worker schedules and food/beverage sales.

In short, transparency is not only good for consumers and employees, it helps with enforcement by facilitating calculations and reducing liability for honest employers.

## **FAIR**

ROC-LA recognizes that equitable apportionment of service charges is a key area of concern.

Mandatory tip sharing between front and back of house employees is legal in California because we do not have a sub-minimum wage or differential treatment for tipped and non-tipped employees.<sup>4</sup> That is, California employers already have the prerogative to establish mandatory tip sharing between all non-managerial employees -- cooks and dishwashers can partake in tips. However, under State Labor Code 351, tips cannot be credited to the wage.

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<sup>3</sup> Civil Grand Jury 2011-2012, City and County of San Francisco. “Surcharges and Healthy San Francisco: Healthy for Whom?” Superior Court of California, County of San Francisco. June 2012.

<sup>4</sup> See *Etheridge v. Reins International* and *Cumbie v. Woody Woo, Inc.*, as well as U.S. Department of Labor’s Field Assistance Bulletin No. 2012-2 ([http://www.dol.gov/whd/FieldBulletins/fab2012\\_2.htm](http://www.dol.gov/whd/FieldBulletins/fab2012_2.htm))

We support consistency in the treatment of service charges -- that they may be distributed to all non-managerial employees. California's Fair Employment and Housing Act (FEHA) strictly distinguishes between managers and employees. An individual cannot hold both roles.

*GOVERNMENT CODE*

*SECTION 12926(t)*

*(t) "Supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.*

Under FEHA, managers who, for example, occasionally help out with serving duties cannot partake in tips. Misclassification claims at the State Labor Commissioner are common, whereby dishonest employers call regular employees "assistant managers" to deny them basic protections such as overtime, meal and rest breaks. ROC-LA has assisted in over \$100,000 in wage claims for misclassified kitchen and bar managers. We support consistency with existing state law -- service charges can be shared among all employees, but not managers or employers. Allowing managers to skim service charges would have the unintended effect of legalizing misclassification.

**ENFORCEABLE**

We encourage Santa Monica to contract with LA City or County for specific functions, while designating a City agency or individual(s) to bottomline enforcement. In order to ensure that employees receive all service charges and employers are protected from fraudulent claims, the City should:

- Fund outreach and education to employers and employees
  - LA City and LA County will establish multi-lingual phone hotlines and online Q&A for employers and employees to learn about the new wage laws.
  - LA City and LA County will contract with community-based organizations for in-person, industry-based outreach, education and counseling in multiple languages. The organizations have expertise in enforcing workplace law and protecting workers from retaliation.
  - Non-profit organizations that currently educate Santa Monica's employers and employees in low-wage workers industries include CLEAN Carwash Campaign and the California Healthy Nail Salon Collaborative.
- Include service charge stealing as "illegal deductions" in wage theft investigations

- San Francisco’s Office of Labor Standards Enforcement (SF OLSE) is the nation’s recognized model for local enforcement. Compare their local rate of over 90% in effective collections with the Labor Commission’s dismal 17% collection rate. The SF OLSE conducts workplace-wide investigations instead of individual wage claims and LA City and County are following the same model.
- We encourage Santa Monica to follow the model of workplace-wide investigation and include stolen service charges as wage theft in the form of “illegal deductions,” subject to the same penalties, fines, and protection from retaliation as other forms of wage theft.
- Require service charge reports to facilitate investigation
  - As mentioned earlier, at one restaurant that ROC-LA assisted, a written record of event tips greatly helped employees to initially flag, and then accurately calculate, stolen tips.
    - Employers should be fined for failure to provide a service charge report. The penalty can be consistent with existing penalties for failure to keep, or allow employees to examine, records.
    - For example, California Labor Code 226 requires employers to keep record of employee earnings through paystubs. In case of violation, employees are entitled to recover damages and penalties up to \$4,000 as well as attorney’s fees. Denying employees the right to a copy of their records entitles them to an additional penalty of \$750.
    - Similarly, California Labor Codes 353-354 require employers to keep records of gratuities. Employers who violate this are guilty of a misdemeanor, punishable by a fine up to \$1,000 or by imprisonment up to 60 days, or both.
    - The City should have subpoena power to access service charge reports, as well as other workplace records, such as payroll, time cards, and books.
- Provide opportunities for employers to settle and self-correct when violations occur
  - The goal of all enforcement is two-fold -- for employees to recover what they’re owed, and for employers to comply with the law going forward. Strong penalties for wage theft are incentives that encourage employers to settle with their employees. It is in no one’s interest for businesses to fold. For example, although San Francisco’s OLSE has the power to revoke health permits for offending restaurants, it has only had to exercise this option once during the past decade. Also in the past decade, their office has been able to settle all but 5 cases. We anticipate (and hope) the same will be possible through strong penalties that create a culture of compliance in Santa Monica. Santa Monica should adopt enforcement provisions that uphold regional standards that have already been

established by LA City, as well as penalties that LA County is anticipated to adopt in the coming months:<sup>5</sup>

- Enforcement agency (in Santa Monica, designate City agency and/or individual(s) while contracting with County for specific functions)
- Fines, penalties, damages
- Private right of action
- Retaliation protection
- Revoke licenses/permits/contracts
- Posting & payroll access
- Outreach & education
- Criminal penalties
- Liens
- U Visa certification

## **PROPOSED SERVICE CHARGE PROVISIONS**

Below are comments on the proposal developed by ROC-LA, CLEAN Carwash Campaign and UNITE HERE Local 11. This language is broad enough to encompass all tipped workers.

### **Proposed Language on Service Charges for Santa Monica Minimum Wage Ordinance**

(a) Service charges shall not be retained by the employer but shall be paid in the entirety by the employer to the employee(s) who performed services for the customer from whom the service charges are collected. No part of these amounts may be paid to supervisory or managerial employees. No employer or agent thereof shall deduct any amount from wages due an employee on account of a service charge, or require an employee to credit the amount, or any part thereof, of a service charge against and as a part of the wages due the employee from the employer.

**[Note:** Follow CA FEHA regarding definition of supervisor or manager]

(b) Amounts collected as service charges shall be paid to employee(s) equitably and according to the services that are or appear to be related to the description of the amounts given by the employer to the customers. Non-management and non-supervisory employees who contribute to the service for the patron for which the service charge is collected, including those who do not provide direct service, may share in the distribution of the service charge.

**[Note:** Explicitly states that all employees, including back of house employees such as cooks and dishwashers, can partake in service charges]

(c) Notwithstanding the foregoing:

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<sup>5</sup> See ROC-LA letter re. wage theft enforcement for greater detail.

1. Amounts collected for banquets or catered meetings shall be paid to the employees who actually wait on guests at the banquet or catered meeting;
2. Amounts collected for room service shall be paid to the employees who actually deliver food and beverage associated with the charge; and
3. Amounts collected for portage service shall be paid to the employees who actually carry the baggage associated with the charge;

Provided, however, that employers which had as of November 30, 2015 an existing practice of pooling and distributing these service charges to non-management/non-supervisory employees other than the above-listed employees may continue such practice to the same extent.

(d) Each employer shall disclose in writing to each employee its plan of distribution of service charges to employees and shall report to employees on each payroll date on the amount of service charges collected and amounts distributed to employees for the pay period in question.

**[Note:** Facilitates greater transparency to employees and protects employers from liability; helpful in case of wage theft investigations]

(e) The amounts shall be paid to the employee(s) no later than the next payroll following collection of an amount from the customers, except that any service charges collected in cash shall be paid to employees at the close of business on the day the charges are collected.

**[Note:** This is consistent with CA Labor Code 351 treatment of tips as well as current practice in many restaurants. Many restaurant workers depend on getting their tips at the end of the day in order to meet day-to-day expenses and support their families, rather than wait twice a month for all of their income. Additionally, ROC-LA has observed more tip stealing when workers get their tips in their check instead of a combination of cash and check.]

(f) An employer that permits patrons to pay service charges by credit card shall pay the employees the full amount of the service charge that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company.

**[Note:** This is consistent with CA Labor Code 351 treatment of tips]

(g) This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for an employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer.

Definitions:

"Service Charge" means all separately-designated amounts charged and collected by an employer from customers that are for service by employees or benefits to employees, or are described in such a way that customers might reasonably believe that the amounts are for those services or benefits, including but not limited to those charges designated on receipts, invoices, or billing statements under the term "service charge," "table charge," "delivery charge," "portage charge," "automatic gratuity charge," "health care surcharge" or similar language.

**[Note:** Effectively addresses consumer transparency and acknowledges that the service industry is fast-changing and it is better to include broad definition]

Thank you for considering these suggestions. For further questions or discussion, please do not hesitate to contact Sophia Cheng, Community Organizer at the Restaurant Opportunities Center of Los Angeles (213-380-1020 or [sophia@rocunited.org](mailto:sophia@rocunited.org)).



Housing Division  
1901 Main Street, Suite B  
Santa Monica, CA 90405  
(310) 458-8702 (310) 998-3298 fax

December 1, 2015

Mayor and Councilmembers  
Santa Monica City Council  
1685 Main Street  
Santa Monica, CA 90401

RE: MINIMUM WAGE ORDINANCE

Honorable Mayor and Councilmembers,

The Housing Commission is writing to express our support for the proposed comprehensive minimum wage ordinance. At our Commission meeting on November 19, we had a presentation on the item and heard public input. All six Commission members present at the meeting voted to support the ordinance.

The Housing Commission was established in 1976, and serves in an advisory capacity to our City Council. The Commission works with housing providers, current recipients, and those in need of affordable housing. In all of our housing deliberations, the Commission strives for fairness, social justice and democracy.

As for Santa Monica's housing supply/demand, the City has a *local* waiting list of 3,370 residents and workforce. Ninety-five percent (95%) of the total households are extremely low income (80%) or very low income (15%). Further, a 2012 draft nexus study by Rosenow Spevacek Group, Inc. (RSG) found that non-residential development over the next 20 years could create 1,280 new jobs, with 842 workers earning moderate income *or less*: 547 would be very low-income, 235 would be low-income and 60 would be moderate-income.

Santa Monica's locally-financed affordable housing is important because the housing provides deeper affordability and prioritizes our lower-income residents and workforce. The Housing Commission is working to identify and forward to Council its recommendations on an ongoing, steady source of funding. Raising the minimum wage is one important step in making our housing more accessible and in maintaining our economic diversity.

Due to the nexus between wages and housing, the Housing Commission for the City of Santa Monica strongly endorses the minimum wage proposal, which includes the tiered increase of the minimum wage to \$15/hour, providing workers with paid sick time, union supersession and a hotel minimum wage overlay, service charge and ensuring wage enforcement, and recommends that our City Council supports and enacts the ordinance. While the Commission recognizes that even a two-earner family at \$15.37 per hour minimum wage will not be able to afford housing at the current market rate in Santa Monica, it will help those already in housing in Santa Monica.

Thank you for considering our input.

Sincerely,



Richard Hilton  
Chair, Housing Commission

CC: Housing Commissioners  
Barbara Collins, Housing Manager  
James Kemper, Housing Commission Liaison  
City Clerk's Office  
Unite Here Local 11



November 20, 2015

The Honorable Ted Winterer  
 Santa Monica City Council  
 1685 Main Street  
 Santa Monica, CA 90401

Dear Councilmember Winterer,

On behalf of the hotel community in Santa Monica, which provides thousands of local jobs, and the 1.9 million workers employed nationally at more than 53,000 properties, we write to express our strong opposition to the potential inclusion of a discriminatory wage mandate for certain hotels as part of the minimum wage ordinance being developed. All workers in Santa Monica should benefit equally from an increase in the city's minimum wage, and we support an across the board wage increase.

As you are aware, the City of Los Angeles earlier this year enacted legislation eventually increasing the minimum wage for workers in the city to \$15 per hour, which our industry did not oppose. As an industry, we are providing leadership in the area of wages, paying an average hourly wage in the Los Angeles area well above the state minimum wage, and in most cases above \$15 per hour. However, prior to the city-wide action the city also passed a controversial measure to increase the minimum wage for large hotels to \$15.37 per hour, with a provision that grants the hotel workers union the power to waive unionized hotels from this rate.

This waiver provision is the focus of an ongoing federal lawsuit brought by American Hotel & Lodging Association and the Asian American Hotel Owners Association. The litigation supports our belief that the waiver provision violates the National Labor Relations Act, which has governed labor-management interactions for decades. As you consider which provisions to include in a wage ordinance for Santa Monica, we strongly urge you to steer clear of treating the workers of one industry differently than others.

The public agrees with this position. When polled earlier this year regarding Los Angeles' hotel-only wage ordinance, 59 percent of those polled were opposed to a wage increase that was applied only to hotel workers. And 69 percent were opposed to allowing unions to bargain for a lower minimum wage for some workers. There is no public policy justification for treating the employees of our industry any differently than others. Simply put: one city, one wage is the most sensible approach to adjusting the minimum wage.

We will follow up with you soon to expand on our concerns in person prior to consideration of minimum wage legislation. Thank you for your consideration and we look forward to discussing with you further.

Sincerely,

Vanessa Sindors  
 Senior Vice President  
 American Hotel & Lodging Assn.

Lynn Mohrfeld  
 President & CEO  
 California Hotel & Lodging Assn.

Bob Amano  
 Executive Director  
 Hotel Assn. of Los Angeles

# Minimum Wage Community Meeting

November 12, 2015

*Input on Comment Boards*

## Hotel Living Wage

- If jumping to \$15.37 in July, the unintended (or intended) consequences of having to eliminate staff & services is inevitable. This directly affects the guest experience, which we cannot afford to have suffer.
- A hotel living wage should only apply to hotels with 150 or more rooms.
- Union hotels should not be exempt.
- It should be phased in just like the City wide wage.
- The unintended consequences will be that the employees it is supposed to benefit it will hurt. Hours will be cut, and jobs will be replaced.
- It will have a dramatic impact on F&B operations. \$15.37 plus tips to servers and bartenders is not fair. Hotel F&B will not be able to compete with restaurants.

SM hotels should pay the same min. wage as LA hotels to attract high quality staff. Customers expect that hotel wage allow a family to live above the poverty line.

Good point!

- Hotels should pay for the money hardworking workers earn them in profits.
- The city should adopt something similar to LA, but scaled down to fit Santa Monica – such as applying to hotels with more than 40 rooms. Hotels in Santa Monica have a very high occupancy rate, and they will be minimally impacted. How can anyone live in Santa Monica at less than \$15.37/hr. – it's just not possible.
- What consideration would tipped versus non-tipped be with this ordinance? The increase would impact operational costs and independents would cause hotel outlets to close.
- Hotels in Santa Monica have high occupancy rates & charge high nightly rates. A hotel minimum wage would create parity with the City of Los Angeles.
- Should not exempt unions
- The hotel business is very cyclical. What will happen in recessionary years? Think about the impact this will have on hotel development in the city.

# Service Charges

Customers do not understand the “service charge” concept – especially those tourists from outside LA/CA/US. This is confusing and will severely decrease the wages of the current job classification of “server.” Those who provide excellent service deserve a high tip for them to keep or allocate as they see fit.

Attracting quality employees is difficult enough. Employers have no incentive to short-change them. Keep in mind all service industry jobs that could be impacted, not just restaurant!

Service charges are not for employers but allow employers to distribute evenly amongst all employees NOT just servers/bar. Wage increase will affect 40% only of our employees @ min wage. The others are tipped & min wage who make average \$35-\$50/hr., and these are the people who do not need a raise.

If it looks like a tip, it’s a tip. If employers tell customers they do not have to tip due to the presence of a service charge, it cannot be an excuse to redistribute tips.

Customers think it’s a tip!

Not if it’s explained properly. ☺

Employer has ability to distribute service charge to all employees and NOT directly tipped employees.

Look at Oakland tip protection law – makes tip for server clear versus charge for wages. Also, Emeryville has similar protections. Part of service charge needs to be allowed to go towards additional FICA taxes and other employer payroll costs.

The point of raising min wage is to lift people out of poverty – service charges should go to employees not employee.

Carwash workers are tipped workers, and they are the definition of the working poor. Service charges should go to employees. Don’t keep working poor. Carwash workers depend on tips for their survival.

# Seasonal Exception

Hard work under the summer sun should earn \$15/hr.

Protect youth jobs at the pier – by giving them a decent wage.

No second class status for seasonal workers.

- Young workers play a key role in supporting families & paying for things like rent and school, seasonal hiring doesn't allow for a livable wage.
- Workers face erratic schedules that make balancing their lives stressful.
- Protects first time job holders – gives youth a chance.

Minimum wage is where you begin. It is not supposed to support a family of 4 – employers will pay more for good help.

I don't believe in any sort of exception to the minimum wage. One must ask themselves who can live in the City of Santa Monica for less than \$15.37/hr.? No one. With that being the case, the City should take steps to ensure that low income residents have a place in the community, along with the healthy. Hard work is hard work – people should be fairly compensated.

There are lots of workers earning minimum wage that are not teenagers, some of them are working to support families. The majority earning min wage are not just starting out in the labor market.

# Paid Leave

Paid leave helps families

Paid sick leave keeps the public safer w/ ↓ spread of disease → particularly in food services

Sick workers shouldn't feel forced to work to earn their wage. Paid sick leave saves families' and the public's health. 5 days minimum.

Increased days impact business ability to plan, staff, and provide adequate service loads.

Have monitoring/enforcement if employer does not allow or pay for sick days and protect workers from retaliation.

Paid leave will hurt small businesses; we can't afford random days off; can't cover the shifts + afford to pay two people to do one job too often; 3 days per employee is plenty.

Paid leave helps the worker and the customer. Do you want to be the healthy dinner patron who has the sick cook sneeze all over your food because he cannot afford to take an unpaid day off to work? It is the right thing to do.

Should align with state PSL rules and regulations.

Reasonable amount of sick days is acceptable (3-5 days) but small businesses will not be able to serve the public if excessive days are given. If you enjoy eating out in SM and a small restaurant has majority of staff call sick (even when not) because of excessive sick leave, the business will close.

3 sick days is not sufficient for workers especially those who care for their children or elderly family members.

We can enjoy French food in Santa Monica, why not French-level sick days too!

If anything more than 5 days was enacted, it will put numerous restaurants out of business. F&B operations work on razor thin margins.

# Education and Enforcement

Define & create monitoring mechanisms (collect data)

- Around compliance, impact

Develop know your rights materials & campaign

Develop wage & schedule regularization protections (to prevent worker hours from being cut to make up for increase)

Create high road employer report cards

More money in worker's pocket is good for the economy = more spending

No one who works 40 hours a week should live in poverty

Enable whistleblowers to report violations

Having the city take the lead on enforcement would be best. Nonprofit organizations could also be useful for education. But, with raising the minimum wage movement, most residents are knowledgeable about the issue. The city should develop a strong enforcement mechanism – or LA County should, and monitor all 88 cities in the county. (HTA, St. Joseph, Chrysalis, OPCC, Unite Here Local 11)

The city should develop strong enforcement provisions to ensure workers get the min. wage, collect lost (stolen) wages and protect workers from retaliation when they speak up about not being paid according to the law. The City should also dedicate resources to enforcement to investigate claims or partner w/ LA County to do so.

On enforcement, please do a better job of enforcing Air BnB rentals.

## MINIMUM WAGE FIRST READING OUTLINE

### BASIC PROVISIONS

Recommended minimum wage ordinance conditions applying to all non-hotel employers, phased increase reaching \$15 by July 1, 2020. Inflation increases starting July 1, 2022. Includes the following exceptions:

- One-year delay (\$15 by 2021) for businesses with 25 or fewer employees
- One-year delay (\$15 by 2021) upon approved application for qualifying nonprofit organizations
- Exception for 18 months for employees during qualifying training programs
- Exception for employees participating in a valid bargaining agreement

### RECOMMENDATIONS ON OUTSTANDING TOPICS

**HOTEL WAGE** – Recommended ordinance conditions for hotels/motels and associated onsite businesses (excludes the youth hostel)

- Minimum wage reaching \$13.25 on July 1, 2016 and \$15.37 on July 1, 2017 (matches LA process of phasing in over 2 year). Annual CPI increases starting July 1, 2018.
  - Will apply to any connected leased space; any contracted employees working on site
- One year waiver upon approval for hotels meeting certain conditions:
  - Would need to cut staff by >20% to avoid bankruptcy / shut down OR
  - Would need to cut hours by >30% to avoid bankruptcy / shut down

*Alternative: \$15.37 all hotels starting July 1, 2016. Inflation increases beginning July 1, 2017.*

- *Pros: Matches LA sooner; provides wage increase sooner. Cons: Does not match LA's phase-in period; shorter ramp-up so harder for hotels to absorb; could lead to service changes or cuts; or reduction in jobs or employment hours.*

### SERVICE CHARGES (applies if employers choose to use a service charge)

Recommended language that draws largely from worker advocacy group proposal

- Service charge proceeds must go to employees who generally provide the service
- Employees except for those with primarily managerial or supervisory roles can receive service charge proceeds (can include back of house)
- Employers must disclose service charge distribution to all employees
- Other surcharges (which could include charges related to maintenance, utilities, health care, etc.) are allowed as long as clearly described and used as stated
- Organizations must clearly describe any charges and their use to customers
- Includes protections for employees who currently receive service charge proceeds

*Alternative 1: Restaurant advocacy group language: less restrictive, fewer transparency regulations, eligibility to receive service charge proceeds based on salaried vs. non-salaried status.*

- *Pros: provides flexibility for employers; ensures proceeds go to workers providing the service. Cons: doesn't fully address transparency to consumers; doesn't provide transparency to workers.*

*Alternative 2: Worker advocacy group language: more restrictive for employers, fewer transparency regulations, excludes managers and supervisors from eligibility for service charge proceeds, does not affirm employers' ability to use other surcharges.*

- *Pros: ensures proceeds go to workers providing the service. Cons: doesn't fully address transparency to consumers, broadens definition of service charge to include other expenses*

## **FIRST TIME WORKERS / SEASONAL EMPLOYERS**

Recommended language provides an exception for first time workers and assists businesses with seasonal needs:

- Exception at 85% of minimum wage for the first 480 hours or six months, whichever is sooner, for employees working in an occupation or activity for the first time (480 hours=6 months @ 20 hours, 3 months @ 40 hours). No age restriction (State learner provision with extended hours).

*Alternative: Pacific Park proposed language: Exemption for employees working six months or less out of any one year period under a temporary services agreement. Employers must also employ 50 or more employees working at least 35 hours per week and earning at least minimum wage*

- Pros: Per Pacific Park, could help keep pier entertainment affordable, and preserve employment and hours at current levels, including first employment opportunity for many workers. Cons: Language is broad enough that movie theaters / large retailers, etc. could be eligible. Absent State-level minimum wage changes, would create a 50% gap by 2020. Could hurt youth / first time workers by keeping salaries low.

## **PAID LEAVE**

Recommended language to apply to all organizations as follows:

- Accrue 1 hour for every 30 worked (same as State). Accrual cap 72 hours (9 days) for businesses with 26 or more employees; 40 hours (5 days) for smaller businesses. (Goes beyond state accrual cap of 48 hours / 3 days; matches SF and Oakland)
  - Can be used for sick, vacation, or personal leave; can carry over hours, no cash out

*Alternative: Hotels match LA's Hotel wage leave provisions; all others accrual cap 9 days for large businesses; 5 days for smaller businesses.*

- *Hotels: 12 days paid leave; 10 days unpaid sick leave (same as LA hotel ordinance)*
  - *Maximum 192 hours accrual; cash payout once every 30 days for time accrued over the maximum*
- Pros: Provides consistency with Los Angeles hotels. Cons: Inconsistent with other Santa Monica businesses. For hotels, short ramp up time to implement potentially large change.

## **EDUCATION AND ENFORCEMENT**

- Outreach and education plan and budget request for community partner grants and marketing (\$80k based on SF grant amounts)
- Direction to negotiate with City / County of LA for Enforcement (amount unknown at this time) and return with proposed contract terms
- Include common enforcement methods (those recommended by the UCLA Labor Center): Revoke Licenses Permits Contracts, Liens, Posting & Payroll Access, Fines & Penalties, Criminal Penalties, Private Right of Action, Retaliation Protection.

*Alternative: All enforcement in house.*

- Pros: retain internal control, potentially more responsive. Cons: More costly; time consuming; unable to respond to variation in workload volume; does not take advantage of regional opportunities and expertise.