

Submitted by: Assembly Chair Rivera and
Assembly Member Dunbar
Reviewed by: Assembly Counsel
For reading: July 28, 2020

**ANCHORAGE, ALASKA
AO No. 2020-84**

1 AN ORDINANCE OF THE ANCHORAGE ASSEMBLY PROVIDING
2 PROTECTION FOR HOTEL WORKERS' EMPLOYMENT BY AMENDING
3 ANCHORAGE MUNICIPAL CODE WITH A NEW CHAPTER REQUIRING LARGE
4 HOTEL EMPLOYERS TO OFFER REHIRE TO EMPLOYEES LAID OFF IN
5 RELATION TO THE COVID-19 PANDEMIC, AND TO RETAIN ELIGIBLE
6 WORKERS FOR A PERIOD OF TIME AFTER A CHANGE IN OWNERSHIP OR
7 CONTROL, AND THEREAFTER CONSIDER OFFERING THEM CONTINUED
8 EMPLOYMENT.

9
10 **THE ANCHORAGE ASSEMBLY ORDAINS:**

11
12 **Section 1.** Anchorage Municipal Code is hereby amended to add a new Chapter
13 10.90 to read as follows:

14
15 **CHAPTER 10.90 LABOR – DISPLACED WORKERS PROTECTION**

16
17 **10.90.010 Definitions.**

18
19 The following words, terms and phrases, when used in this chapter, shall
20 have the meanings ascribed to them in this section, except where the context
21 clearly indicates a different meaning:

22
23 "Affected hotel" means:

- 24 1. in the event of a change in control as defined in part 1. for that
25 term below, the hotel or discrete portion of the hotel that has been the subject
26 of the change in control and remains in operation following the change in
27 control; or
28 2. in the event of a change in control as defined in part 2. or 3. for
29 that term below, the hotel that remains in operation following the change in
30 control of that hotel.

31
32 "Change in control" means:

- 33 1. any sale, assignment, transfer, contribution, or other disposition
34 of all or substantially all of the assets used in the operation of a hotel or a
35 discrete portion of the hotel that continues in operation as a hotel;
36 2. any sale, assignment, transfer, contribution, or other disposition
37 of a controlling interest (including by consolidation, merger, or reorganization)
38 of a hotel employer or any person who controls a hotel employer; or
39 3. any other event or sequence of events (including a purchase,
40 sale, lease, or termination of a management contract or lease) that causes
41 the identity of the hotel employer at a hotel to change.

42 For purposes of this chapter, a change in control shall be defined to
43 occur on the date of execution of the document effectuating the change in

1 control.

2
3 "Eligible hotel worker" means a hotel worker employed by an
4 incumbent hotel employer at the time of a change in control and who has
5 been so employed for at least two months prior to the change in control.
6

7 "Hotel" means an establishment containing 100 or more guest rooms
8 that provides temporary lodging in the form of overnight accommodations in
9 guest rooms to transient patrons for periods of thirty consecutive calendar
10 days or less, and may provide additional services, such as conference and
11 meeting rooms, restaurants, bars, or recreation facilities available to guests
12 or to the general public. "Hotel" includes motor lodges, motels, apartment
13 hotels, and tourist courts meeting the definition set forth above. "Hotel" also
14 includes any contracted, leased or sublet premises operated in conjunction
15 with a hotel or that is used for the primary purpose of providing services at a
16 hotel. "Hotel" does not include a hostel, which is a lodging facility primarily
17 characterized by dormitory-style accommodations, shared bathrooms, and
18 reservations of beds rather than rooms. "Hotel" also does not include
19 corporate housing, rooming houses, boarding houses, or private residential
20 clubs, single-room occupancy housing, vacation rentals, or bed and
21 breakfast establishments within a single-unit residence.
22

23 "Hotel employer" means any person who owns, controls, or operates
24 a hotel in the municipality, and includes any person or contractor who, in a
25 managerial, supervisory, or confidential capacity, employs hotel workers to
26 provide services at a hotel in conjunction with the hotel's purpose.
27

28 "Hotel worker" means any person who is employed by a hotel
29 employer to provide services at a hotel. "Hotel worker" does not include a
30 managerial, supervisory or confidential employee.
31

32 "Hotel worker retention period" means the period of time beginning on
33 the date of a change in control and extending to ninety (90) days from the
34 first date that an affected hotel is open to the public after a change in control.
35

36 "Incumbent hotel employer" means a hotel employer who owns,
37 controls, or operates a hotel prior to a change in control of the hotel or of a
38 discrete portion of the hotel that continues to operate as a hotel after the
39 change in control.
40

41 "Laid-off Employee" means a hotel worker who was employed by the
42 employer for

43 1. six months or more in the 12 months preceding January 31,
44 2020, and whose most recent separation from active service occurred after
45 January 31, 2020, or

46 2. six months or more in the 12 months preceding the change in
47 control,

48 and was due to a government shutdown order, lack of business, a
49 reduction in force or other, economic, non-disciplinary reason.
50

51 "Length of Service" means the total of all periods of time during which

1 a hotel worker has been in active service, including periods of time when the
2 employee was on leave or on vacation.

3
4 "Successor hotel employer" means a hotel employer who owns,
5 controls, or operates a hotel after a change in control.

6
7 **10.90.020 Notice of change in control.**

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9 A. Within five days of a change in control, a successor hotel employer
10 shall post written notice of the change in control at the location of the
11 affected hotel. This written notice shall remain posted during any
12 closure of the affected hotel and for six months following the first date
13 on which the affected hotel is open to the public under the successor
14 hotel employer.

15
16 B. This written notice shall include, but not be limited to, the name and
17 contact information of the incumbent hotel employer, the name and
18 contact information of the successor hotel employer, and the effective
19 date of the change in control.

20
21 C. This written notice shall be posted in a conspicuous place at the
22 affected hotel and shall be readily visible to eligible hotel workers,
23 other employees, and applicants for employment.

24
25 **10.90.030 Hotel worker retention.**

26
27 A. Within fifteen days of a change in control, an incumbent hotel
28 employer shall provide a successor hotel employer with a list of eligible
29 hotel workers. This list shall include the name, date of hire, and job
30 classification of each eligible hotel worker. A successor hotel employer
31 shall be required to maintain and hire from this list during the hotel
32 worker retention period.

33
34 B. A successor hotel employer shall, during the hotel worker retention
35 period, offer each eligible hotel worker employment for no less than
36 ninety days, except that:

37 1. A successor hotel employer shall not be required to offer
38 employment to an eligible hotel worker if the successor hotel
39 employer has reasonable and substantiated cause not to retain
40 that eligible hotel worker based on that eligible hotel worker's
41 individual performance or conduct while employed by the
42 incumbent hotel employer; and

43 2. If a successor hotel employer determines during the hotel
44 worker retention period that it requires fewer hotel workers than
45 were required by the incumbent hotel employer, the successor
46 hotel employer shall retain eligible hotel workers pursuant to
47 the terms of a relevant collective bargaining agreement, if any,
48 or by seniority and experience within each job classification to
49 the extent that comparable job classifications exist.

50
51 C. An eligible hotel worker retained pursuant to this section shall be

1 employed under terms and conditions established by the successor
2 hotel employer as required by law and shall not be discharged except
3 for good cause based on individual performance or conduct.
4

5 D. An offer of employment made pursuant to subsection B. shall be made
6 in writing and shall remain open for at least ten business days from
7 the date of the offer.
8

9 E. A successor hotel employer shall retain written verification of each
10 offer of employment made pursuant to subsection B. This verification
11 shall include the name, address, date of hire, and job classification of
12 the eligible hotel worker to whom the offer was made. A successor
13 hotel employer shall retain the required verification for no less than
14 three years from the date the offer is made.
15

16 F. At the end of the hotel worker retention period, a successor hotel
17 employer shall provide each hotel worker retained pursuant to this
18 section with a written performance evaluation. If the hotel worker's
19 performance was satisfactory, the successor hotel employer shall
20 consider offering the hotel worker continued employment under the
21 terms and conditions established by the successor hotel employer and
22 as required by law. A successor hotel employer shall retain the written
23 performance evaluation required under this subsection for no less
24 than three years from the date it is issued.
25

26 G. The rights to retention set forth in this section do not apply to any
27 managerial, supervisory, or confidential employee and do not include
28 the right to retain any supervisory or management responsibility.
29

30 **10.90.040 Right to Recall**

31

32 A. An hotel employer shall offer its laid-off employees in writing, to their
33 last known physical address, and by email and text message to the
34 extent the employer possesses such information, all job positions
35 which become available after this chapter's effective date for which
36 the laid-off employees are qualified. A laid-off employee is qualified
37 for a position if the employee:

38 1. held the same or similar position at the hospitality enterprise at
39 the time of the employee's most recent separation from active
40 service with the employer; or

41 2. is or can be qualified for the position with the same training that
42 would be provided to a new employee hired into that position.

43 The employer shall offer positions to laid-off employees in an order of
44 preference corresponding to categories 1. and 2. in the preceding
45 sentence. Where more than one employee is entitled to preference
46 for a position, the employer shall offer the position to the laid-off
47 employee with the greatest length of service for the hospitality
48 enterprise.
49

50 B. A laid-off employee who is offered a position pursuant to this chapter
51 shall be given no less than ten days in which to accept or decline the

1 offer.

2
3 C. A hotel employer that declines to recall a laid-off employee on the
4 grounds of lack of qualifications and instead hires someone other than
5 a laid-off employee shall provide the laid-off employee a written notice
6 within 30 days identifying all reasons for such decision.

7
8 D. The requirements of this chapter also apply in the following
9 circumstances:

- 10 1. The ownership of the hotel employer changed after the
11 separation from employment of a laid-off employee but the
12 enterprise is conducting the same or similar operations as
13 before January 31, 2020;
- 14 2. The form of organization of the hotel employer changed after
15 January 31, 2020;
- 16 3. Substantially all of the assets of the hotel employer were
17 acquired by another entity which conducts the same or similar
18 operations using substantially the same assets;
- 19 4. The hotel employer relocates the operations at which a laid-off
20 employee was employed before January 31, 2020 to a different
21 location within the municipality; and
- 22 5. Any combination of the circumstances described in subsections
23 1. through 4.

24
25 **10.90.050 Notice.**

26
27 A hotel employer shall provide written notice of the hotel workers' rights set
28 forth in this chapter to each hotel worker at the time of hire or on the effective
29 date of the ordinance codified in this chapter, whichever is later. Such written
30 notice shall be provided in English, Spanish and any other language spoken
31 by five percent or more of the hotel workers employed by the hotel employer.

32
33 **10.90.060 Retaliatory action prohibited.**

34
35 No person shall take an adverse employment action against a hotel worker
36 for exercising rights protected under this chapter. There shall be a rebuttable
37 presumption that an adverse employment action taken against a hotel worker
38 within ninety days of the hotel worker's exercise of rights under this chapter
39 was taken in retaliation for the exercise of such rights.

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41 **10.90.070 Supersession by collective bargaining agreement.**

42
43 The provisions of sections 10.90.030 and 10.90.040, or any part thereof, may
44 be waived pursuant to a bona fide collective bargaining agreement, but only
45 if the waiver is expressly set forth in clear and unambiguous written terms.
46 Neither party to a collective bargaining relationship may waive or supersede
47 any provision of this chapter by means of unilaterally imposed terms and
48 conditions of employment.

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50 **10.90.080 Civil remedies.**

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- A. Civil Action. The municipality or any aggrieved person may enforce the provisions of this chapter by means of a civil action.
- B. Injunction. Any person who commits an act, proposes to commit an act, or engages in any pattern or practice that violates this chapter may be enjoined therefrom by a court of competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved person, by the municipal attorney, or by any person or entity who will fairly and adequately represent the interests of an aggrieved person or persons.
- C. Damages and Penalties. Any person who violates the provisions of this chapter is liable for any actual damages suffered by any aggrieved person or for statutory damages up to the amount of one hundred dollars per aggrieved person per day, except that statutory damages for failure to maintain records shall not exceed one thousand dollars per day in total. For willful violations, the amount of monies and penalties to be paid under this subsection shall be trebled.
- D. Cumulative Remedies. The remedies set forth in this Chapter are cumulative. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under this Code or State law.

Section 2. Report to the Assembly. On or before January 31, 2022, the Municipality Manager shall report to the Assembly on the effectiveness of Section 10.90.040 in promoting employment stability and shall advise the Assembly on the need for further action.

Section 3. This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2020.

Chair of the Assembly

ATTEST:

Municipal Clerk



MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 444-2020

Meeting Date: July 28, 2020

From: Assembly Chair Rivera and Assembly Member Dunbar

Subject: AN ORDINANCE OF THE ANCHORAGE ASSEMBLY PROVIDING PROTECTION FOR HOTEL WORKERS' EMPLOYMENT BY AMENDING ANCHORAGE MUNICIPAL CODE WITH A NEW CHAPTER REQUIRING LARGE HOTEL EMPLOYERS TO OFFER REHIRE TO EMPLOYEES LAID OFF IN RELATION TO THE COVID-19 PANDEMIC, AND TO RETAIN ELIGIBLE WORKERS FOR A PERIOD OF TIME AFTER A CHANGE IN OWNERSHIP OR CONTROL, AND THEREAFTER CONSIDER OFFERING THEM CONTINUED EMPLOYMENT.

The proposed ordinance, the "Hotel Workers Protection Act," ensures a series of protections for hotel workers in Anchorage, excluding management or confidential employees. Specifically, it provides for:

- A Right of Recall. Hotel workers who were laid off due to the COVID-19 pandemic or future crises would receive priority re-hiring to jobs at the hotel, by seniority, when the business returns and the hotel hires for open positions.
- Worker retention on ownership change. Hotel workers who work at a hotel which changes ownership or management must be retained by the new owner or operator for a 90-day transition period. The hotel can dismiss for cause, or if the hotel can show it needs fewer employees for its operations than the number on the retained employee list from the incumbent hotel. At the end of the 90-day retention period the new hotel employer provides a performance evaluation to each retained employee, and if satisfactory shall consider offering continued employment.
- Notice to all hotel workers of their rights under this ordinance.
- Prohibits retaliatory or adverse employment action for exercising rights under the ordinance and establishes a rebuttable presumption that an adverse employment action taken within 90 days is retaliatory.
- Allows the ordinance requirements to be altered or waived by mutual agreement in a collective bargaining agreement.
- Provides for enforcement by a civil action in court, by any person aggrieved, and allows for injunctive relief by any aggrieved person, the Municipal Attorney, or any person or entity who can fairly and adequately represent the interests of the aggrieved person or persons.

A new chapter is established in the Municipal Code for enactment of this ordinance, and the title is generic to labor regulation for protection of workers. This will accommodate additional enactments for labor regulation by local ordinance in those areas where the Municipality is not preempted by state or federal law.

1 Section 2 of the proposed ordinance requires the Municipal Manager or a designee to
2 report to the Assembly on the effectiveness of the recall section, for workers laid off
3 due to COVID-19 effects.
4

5 There are no public sector economic effects from this ordinance, but in the private
6 sector hotel employers may be subject to some costs and time investment to provide
7 the required notices and conduct the evaluations.
8

9 **We request your support for the ordinance.**

10
11 Prepared by: Assembly Counsel
12 Respectfully submitted: Felix Rivera, Assembly Chair
13 District 4, Midtown Anchorage
14
15 Forrest Dunbar, Assembly Member
16 District 5, East Anchorage