

MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM

No. _____

Meeting Date: March 12, 2013

From: MAYOR

**Subject: AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE
CHAPTER 3.70, EMPLOYEE RELATIONS, WITH COMPREHENSIVE
UPDATES SECURING LONG TERM VIABILITY AND FINANCIAL
STABILITY OF EMPLOYEE AND LABOR RELATIONS.**

The Municipality's current labor relations ordinance, AMC 3.70, was originally adopted in 1969 and substantially amended in 1977 and 1989. It is critically out of date in regard to current municipal operations and modern effective management techniques. In addition, the current code does not fully recognize the Assembly's ultimate responsibility to the citizens of Anchorage to effectively budget and control spending. The result is an amalgamation of nine collective bargaining agreements (CBAs), excessively complex and inconsistent personnel management systems, and rapidly increasing labor and administrative expenses, out-stripping inflation and revenue.

Similar defects in public sector collective bargaining have created a crisis nationwide in regard to public labor relations. Many municipalities and cities, as well as some states, are locked in legal and political struggles with their public employee labor unions, some with the goal of eliminating collective bargaining and terminating current contracts. That is not the course being proposed here. Through this ordinance, we hope to avoid a similar struggle in Anchorage by revising the current code to allow for the gradual reformation of Municipal labor relations to control labor and administrative costs while still recognizing current agreements and legitimate reasonable collective bargaining expectations, going forward.

Background

Public entities, unlike private corporations, are not subject to federal labor relations laws such as the National Labor Relations Act (NLRA). Public labor relations are controlled by state law. Alaska state law (PERA, AS § 23.40.010, *et seq.*) allows Municipalities to "opt out" and create their own labor relations structure. The Municipality exercised this option in 1975 and is largely free to modify its labor relations framework as local circumstances require. *See, Anchorage Municipal Employees Ass'n v. Municipality of Anchorage*, 618 P.2d 575, 581 (Alaska 1980).

Modifications to AMC 3.70

The ordinance does NOT amend, alter, or void any currently existing labor agreement during its current term. This ordinance applies to all such agreements negotiated in the future. This ordinance does not exempt the Municipality from any applicable safety laws or regulations, nor does it eliminate any Municipal safety team. For the purpose of scheduling shifts, holidays, and station assignments, seniority remains a management tool.

In recognition of sustaining effective operations and financially sound principles, amendments are proposed under AMC 3.70.020. Under the ordinance, the total direct labor costs of all future contracts as a component of total operating costs will be compared to revenue projections prior to approval, and limited by increases in the CPI-U, based on a 5 year average plus 1 percent. For example, the 5 year average for 2008-2012 is 2.6%. Contracts executed in 2013 cannot increase more than the maximum allowed 3.6% per year (5 year average of 2.6% plus 1%). The limitation on direct labor costs sets a ceiling for costs and is not considered a floor for future contract negotiations. Any agreement needs to take into consideration the attainable tax revenue as calculated in Title 12. Additional safeguards to reflect actual labor contract costs are included in AMC 3.70.130D as it requires cost projections be reported to the Assembly.

In addition, a limitation under section AMC 3.70.020H has been placed on pay enhancement provisions. This change is to provide transparency in regard to actual wages, standardize pay enhancement methodology, and to recognize a clear division between increases in pay rate based on enhanced qualifications, and increases in pay rate based on performance, the latter being eliminated. Longevity pay (for employees on the payroll as of 12/31/1980) and service recognition pay (generally for employees on the payroll after 12/31/1980 and before 7/1/2011) will continue for employees in those programs. However current "performance" incentives will be frozen at earned levels at the end of contract. Any "performance" incentive subject to renewal will expire at the end of the earned period.

The increased costs of future collective bargaining agreements will include the current cost of contracts, plus CPI-U, plus 1%. Future negotiations will include the topic of pay enhancements for items such as education, certification, special team assignments, acting pay, and shift differentials.

Current benefit programs today result in over 600 different types of eligibility criteria to administer employee benefit plans. The proposed amendments in AMC 3.70.020E and 3.70.130 require uniformity and consistency in those benefit programs sponsored by the Municipality. The standardization of employee benefit plans reduces the current administrative complexities of multiple plans, with inappropriate rewards, and allows greater flexibility to adjust to market conditions while efficiently providing competitive, uniform benefits to all employees. PERS participation and currently existing pension plans will not be affected; nor will benefits to current retirees.

Changes to AMC 3.70.010, 3.70.020 and 3.70.090A.2 allow the implementation of a managed competition program, a type of program which has been successfully implemented in municipalities throughout the country. Direct law enforcement and fire protection services, including EMS, fire prevention, and emergency dispatch, are

1 exempted from any managed competition program that is ultimately implemented.
2 These amendments only enable the changes to the managed competition program,
3 additional provisions under Title 7, Purchasing, will be necessary to fully implement a
4 managed competition program. A managed competition plan will be proposed by the
5 administration within 180 days of passage of this ordinance.
6

7 The purpose of managed competition is not to eliminate bargaining unit work, but to
8 make it competitive with private service sectors. Commonly, the existing bargaining
9 unit is the successful bidder. Managed competition provides a structured, transparent
10 process that allows an open and fair comparison of public sector employees and
11 independent contractors in their ability to deliver services to our citizens. This strategy
12 recognizes the high quality and potential of public sector employees, and seeks to tap
13 their creativity, experience and resourcefulness by giving them the opportunity to
14 structure organizations and processes in ways similar to best practices in competitive
15 businesses. The benefit of the competitive process is the ability of the public agency to
16 positively influence expectations about local government and gain public support. A
17 properly designed competitive process can enable the delivery of services as capably
18 and efficiently as any private vendor.
19

20 The ordinance is revised to clarify the impasse process resulting in a more effective
21 process for arbitrations and strikes. Under the amended provisions of AMC 3.70.110,
22 upon reaching impasse after mediation, fact-finding, and arbitration, the arbitrator's
23 decision must be approved by at least 8 members of the Assembly. If the arbitrator's
24 decision is not approved, the Municipality's Last Best Offer (LBO) may be implemented
25 in accordance with 3.70.110B.10. The ability of the union to strike has been replaced
26 with less disruptive means to resolve contract negotiation disputes while still ensuring
27 delivery of public services.
28

29 The Alaska Superior Court has recently reaffirmed decisions of the US and Alaska
30 Supreme Courts ruling that public employees have no inherent right to strike, and the
31 courts have repeatedly reaffirmed the power of the legislative branch to control
32 appropriations. Public labor contract negotiations are inherently different from the
33 private sector due to the political nature of the procedure. Eliminating any right to strike
34 puts both labor and management on equal footing and keeps public services from
35 being endangered.
36

37 Greater transparency and consistency is also proposed under AMC 3.70.020F. The
38 ordinance standardizes rules regarding shop steward and union officer time-keeping
39 and compensation for union activity, and transfers payment obligation to the unions.
40 The requirement that the Municipality not pay for shop steward time spent exclusively
41 on union activities has been codified.
42

43 AMC 3.70.050 currently establishes the impartial Employee Relations Board (ERB)
44 with the power to recognize and establish bargaining units and to resolve disputes as
45 to what positions are exempted from collective bargaining. In the proposed ordinance,
46 the ERB powers and policies are further defined and consistent with other municipal
47 boards and commissions. The unions will be able to propose candidates for one of the
48 ERB seats.
49

50 AMC 3.70.060, collective bargaining units, is updated with modified definitions of
51 "confidential" and "supervisory" employees along with clarifications of executive staff, to

provide a clear line between represented employees and management. This will help avoid placement of employees in positions that subject them to conflicting loyalties.

AMC 3.70.100 is amended to require both parties to split the cost of mediation if it is required. The purpose of this amendment is to assure that both parties come to the mediation with an equal stake in the outcome. Under the current ordinance, the Municipality bears the entire cost of mediation.

AMC 3.70.100 and .110 are amended to limit contract continuations to 180 days.

A number of changes in AMC 3.70.170 are aimed at requiring more uniformity in Municipal collective bargaining agreements. Standardized holidays are noted in section AMC 3.70.020G along with items in section AMC 3.70.170. This includes applying FLSA (wage and hour) standards to the extent possible, and a more uniform implementation of the personnel rules. As a practical matter, the differences in the individual CBAs and personnel rules, and numerous different ways of calculating pay, result in complex, nonstandard rules across the municipality which creates additional administrative costs to maintain. These provisions make it clear that overtime will be a multiplication factor of 1 ½ times the hourly rate, allowing for the personnel rules and negotiation to determine overtime eligibility.

To implement standardization, and to allow more flexibility in changing working conditions through collective bargaining, the application of "past practice" in arbitration has been limited in the ordinance.

Although the Municipality currently recognizes nine bargaining units, AMC 3.70.190 only names five. AMC 3.70.190 is currently inconsistent and out of date, and therefore, unnecessary reporting is proposed for deletion. The modified language reaffirms the established collective bargaining units while maintaining flexibility for future changes. Inclusion of positions in a bargaining unit will be handled through the bargaining process unless identified as exempt in 3.70.

Additional revisions clarify and eliminate unused definitions and repeal unnecessary, outdated section AMC 3.70.185. The ordinance also proposes changes to incorporate prior assembly guidance that limits labor agreements to three years, forbids union signatory clauses, and increases scheduling flexibility.

The intent of these revisions is to place the power of appropriation firmly with the Assembly and to apply uniform standards in specific areas ensuring all municipal employees are under the same set of rules with not favoring one group over another. It supports a relationship with the labor unions and reinforces the need to be fiscally responsible and competitive.

THE ADMINISTRATION RECOMMENDS APPROVAL.

Prepared by:	William Earnhart, Assistant Municipal Attorney
Concur:	Dennis A. Wheeler, Municipal Attorney
Concur:	George J. Vakalis, Municipal Manager
Respectfully submitted:	Daniel A. Sullivan, Mayor