

Submitted by: Assembly Chair Rivera and
Assembly Member Dunbar
Prepared by: Assembly Counsel
For reading: August 25, 2020

ANCHORAGE, ALASKA
AO No. 2020-84(S-1)

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**
4 **LARGE HOTEL EMPLOYERS TO OFFER REHIRE TO EMPLOYEES LAID OFF**
5 **IN 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 **WHEREAS**, the coronavirus global pandemic emergency has heavily impacted
11 travel and the hospitality industry, decimating tourism revenues for many popular
12 destinations including Alaska; and

13
14 **WHEREAS**, the repercussions for many hotels with sharp declines in reservations
15 and overnight stays include furloughs or layoffs of hotel workers due to lack of
16 business, or even government shut down orders; and

17
18 **WHEREAS**, when hotel business begins picking up again those employees laid off
19 through no fault of their own and lacking the bargaining sophistication of large
20 hotel operators should have a right to return to their hotel position if desired; and

21
22 **WHEREAS**, similarly, when a large hotel changes ownership or its operator,
23 qualified and hardworking hotel employees should have the opportunity to
24 continue employment at those premises, without overly burdening a hotel owner's
25 economic rights or business autonomy; and

26
27 **WHEREAS**, the Assembly desires to protect hotel workers by providing them the
28 first priority for offered employment following layoffs due to the COVID-19
29 pandemic or future crises, or after a change in hotel ownership or operator; now,
30 therefore,

31
32 **THE ANCHORAGE ASSEMBLY ORDAINS:**

33
34 **Section 1.** Anchorage Municipal Code is hereby amended to add a new
35 Chapter 10.90 to read as follows:

36
37 **CHAPTER 10.90 LABOR – DISPLACED WORKERS PROTECTION**

38
39 **10.90.010 Definitions.**

40
41 The following words, terms and phrases, when used in this chapter, shall
42 have the meanings ascribed to them in this section, except where the
43 context clearly indicates a different meaning:

1
2 "Affected hotel" means:

3 1. in the event of a change in control as defined in part 1. for that
4 term below, the hotel or discrete portion of the hotel that has been the
5 subject of the change in control and remains in operation following the
6 change [chance] in control; or

7 2. in the event of a change in control as defined in part 2. or 3.
8 for that term below, the hotel that remains in operation following the change
9 in control of that hotel.

10
11 "Change in control" means:

12 1. any sale, assignment, transfer, contribution, or other
13 disposition of all or substantially all of the assets used in the operation of a
14 hotel or a discrete portion of the hotel that continues in operation as a hotel;

15 2. any sale, assignment, transfer, contribution, or other
16 disposition of a controlling interest (including by consolidation, merger, or
17 reorganization) of a hotel employer or any person who controls a hotel
18 employer; or

19 3. any other event or sequence of events (including a purchase,
20 sale, lease, or termination of a management contract or lease) that causes
21 the identity of the hotel employer at a hotel to change.

22 For purposes of this chapter, a change in control shall be defined to
23 occur on the date of execution of the document effectuating the change in
24 control.

25
26 **"Customary seasonal work" means seasonal work, as that term**
27 **is defined in AS 23.30.220(c)(1), that has previously been performed**
28 **by an employee during approximately the same part of at least one**
29 **previous calendar year.**

30
31 "Eligible hotel worker" means a hotel worker employed by an
32 incumbent hotel employer at the time of a change in control and who has
33 been so employed for at least two months prior to the change in control.

34
35 "Hotel" means an establishment containing 100 or more guest rooms
36 that provides temporary lodging in the form of overnight accommodations in
37 guest rooms to transient patrons for periods of thirty consecutive calendar
38 days or less, and may provide additional services, such as conference and
39 meeting rooms, restaurants, bars, or recreation facilities available to guests
40 or to the general public. "Hotel" includes motor lodges, motels, apartment
41 hotels, and tourist courts meeting the definition set forth above. "Hotel" also
42 includes contracted, leased or sublet premises operated in conjunction with
43 a hotel or that is used for the primary purpose of providing services at a
44 hotel. "Hotel" does not include a hostel, which is a lodging facility primarily
45 characterized by dormitory-style accommodations, shared bathrooms, and
46 reservations of beds rather than rooms. "Hotel" also does not include
47 corporate housing, rooming houses, boarding houses, or private residential
48 clubs, single-room occupancy housing, vacation rentals, or bed and
49 breakfast establishments within a single-unit residence.

50
51 "Hotel employer" means any person who owns, controls, or operates

1 a hotel in the municipality, and includes any person or contractor who, in a
 2 managerial, supervisory, or confidential capacity, employs hotel workers to
 3 provide services at a hotel in conjunction with the hotel's purpose.
 4

5 "Hotel worker" means any person who is employed by a hotel
 6 employer to provide services at a hotel. "Hotel worker" does not include a
 7 managerial, supervisory or confidential employee.
 8

9 "Hotel worker retention period" means the period of time beginning
 10 on the date of a change in control and extending to ninety (90) days from
 11 the first date that an affected hotel is open to the public after a change in
 12 control.
 13

14 "Incumbent hotel employer" means a hotel employer who owns,
 15 controls, or operates a hotel prior to a change in control of the hotel or of a
 16 discrete portion of the hotel that continues to operate as a hotel after the
 17 change in control.
 18

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

21 ~~[4.] three [six]~~ months or more in the 12 months preceding
 22 March 11 [January 31], 2020, and whose most recent separation from
 23 active service, or failure to be scheduled for customary seasonal work,
 24 occurred after March 11 [January 31], 2020, ~~[or]~~

25 ~~[2. six months or more in the 12 months preceding the~~
 26 ~~change in control,]~~

27 and was due to a government shutdown order, lack of business, a
 28 reduction in force or other, economic, non-disciplinary reason.~~[,]~~
 29

30 "Length of Service" means the total of all periods of time during
 31 which a hotel worker has been in active service, including periods of time
 32 when the employee was on leave or on vacation.
 33

34 "Successor hotel employer" means a hotel employer who owns,
 35 controls, or operates a hotel after a change in control.
 36

37 **10.90.020 Notice of change in control.**

38
 39 A. Within five days after [of] a change in control, a successor hotel
 40 employer shall post written notice of the change in control at the
 41 location of the affected hotel. This written notice shall remain posted
 42 during any closure of the affected hotel and for six months following
 43 the first date on which the affected hotel is open to the public under
 44 the successor hotel employer. The successor hotel employer may
 45 begin interviewing and offering jobs to current employees in
 46 accordance with Section 10.90.030 prior to the change in control.
 47

48 B. This written notice shall include, but not be limited to, the name and
 49 contact information of the incumbent hotel employer, the name and
 50 contact information of the successor hotel employer, and the
 51 effective date of the change in control.

- 1
2 C. This written notice shall be posted in a conspicuous place at the
3 affected hotel and shall be readily visible to eligible hotel workers,
4 other employees, and applicants for employment.
5

6 **10.90.030 Hotel worker retention.**
7

- 8 A. Within fifteen days of a change in control, an incumbent hotel
9 employer shall provide a successor hotel employer with a list of
10 eligible hotel workers. This list shall include the name, last known
11 physical address, email address, text message number to the extent
12 the employer possesses such information, date of hire, and job
13 classification of each eligible hotel worker. A successor hotel
14 employer shall be required to maintain and hire from this list during
15 the hotel worker retention period.
16

- 17 B. Prior to the change in control and thereafter during the hotel worker
18 retention period a successor hotel employer may provide broad
19 notice of a hiring period of not less than five days through a variety of
20 means that shall include notification of eligible hotel workers in
21 writing, to their last known physical address, and by email or text
22 message to the extent the employer possesses such information.
23 Applicants responding in the hiring period shall be hired based on
24 subsections D. through F. of this section.
25

- 26 C. A successor hotel employer shall, during the hotel worker retention
27 period, offer each eligible hotel worker employment for no less than
28 ninety days, except that:

- 29 1. A successor hotel employer shall not be required to offer
30 employment to an eligible hotel worker if the successor hotel
31 employer has reasonable and substantiated cause not to
32 retain that eligible hotel worker based on that eligible hotel
33 worker's individual performance or conduct while employed by
34 the incumbent hotel employer; and
35 2. If a successor hotel employer determines during the hotel
36 worker retention period that it requires fewer hotel workers
37 than were required by the incumbent hotel employer, the
38 successor hotel employer shall retain eligible hotel workers
39 pursuant to the terms of a relevant collective bargaining
40 agreement, if any, or by seniority and experience within each
41 job classification to the extent that comparable job
42 classifications exist.
43

- 44 D.[G.] An eligible hotel worker retained pursuant to this section shall be
45 employed under terms and conditions established by the successor
46 hotel employer or as required by law and during the hotel worker
47 retention period shall not be discharged except for good cause
48 based on individual performance, [or] conduct, but may be
49 furloughed in a reduction in force due to the hotel's staffing
50 requirements.
51

1 E.[D.] An offer of employment made pursuant to subsection B. shall be
 2 made in writing and shall remain open for at least ten [business]
 3 days from the date of the offer.

4
 5 F.[E.] A successor hotel employer shall retain written verification of each
 6 offer of employment made pursuant to subsection C. [B.] This
 7 verification shall include the name, address, date of hire, and job
 8 classification of the eligible hotel worker to whom the offer was
 9 made. A successor hotel employer shall retain the required
 10 verification for no less than three years from the date the offer is
 11 made.

12
 13 G.[F.] At the end of the hotel worker retention period, a successor hotel
 14 employer shall provide each hotel worker retained pursuant to this
 15 section with a written performance evaluation. If the hotel worker's
 16 performance was satisfactory, the successor hotel employer shall
 17 consider offering the hotel worker continued employment under the
 18 terms and conditions established by the successor hotel employer or
 19 [and] as required by law. A successor hotel employer shall retain the
 20 written performance evaluation required under this subsection for no
 21 less than three years from the date it is issued.

22
 23 H.[G.] The rights to retention set forth in this section do not apply to any
 24 managerial, supervisory, or confidential employee and do not include
 25 the right to retain any supervisory or management responsibility.

26
 27 **10.90.040 Right to Recall**

28
 29 A. A [An] hotel employer shall offer its laid-off employees in writing, to
 30 their last known physical address, and by email and text message to
 31 the extent the employer possesses such information, all job positions
 32 which become available after this chapter's effective date for which
 33 the laid-off employees are qualified. A laid-off employee is qualified
 34 for a position if the employee:

- 35 1. held the same or similar position at the hospitality enterprise
 36 at the time of the employee's most recent separation from
 37 active service with the employer; or
- 38 2. is or can be qualified for the position with the same training
 39 that would be provided to a new employee hired into that
 40 position.

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

47
 48 B. A laid-off employee who is offered a position pursuant to this chapter
 49 shall be given no less than seven [ten] days in which to accept or
 50 decline the offer.
 51

- 1 C. A hotel employer that declines to recall a laid-off employee on the
2 grounds of lack of qualifications and instead hires someone other
3 than a laid-off employee shall provide the laid-off employee a written
4 notice within 30 days identifying all reasons for such decision.
5
- 6 D. The requirements of this **section** [~~chapter~~] also apply in the
7 following circumstances:
8 1. A change in control of the hotel occurred [~~The ownership of~~
9 ~~the hotel employer changed~~] after the separation from
10 employment of a laid-off employee but the enterprise is
11 conducting the same or similar operations as before **March 11**
12 **[January 31]**, 2020;
13 2. The form of organization of the hotel employer changed after
14 **March 11 [January 31]**, 2020;
15 3. Substantially all of the assets of the hotel employer were
16 acquired by another entity which conducts the same or similar
17 operations using substantially the same assets;
18 4. The hotel employer relocates the operations at which a laid-off
19 employee was employed before **March 11 [January 31]**, 2020
20 to a different location within the municipality; and
21 5. Any combination of the circumstances described in
22 subsections 1. through 4.
23

24 **10.90.050 Notice.**
25

26 A hotel employer shall provide written notice of the hotel workers' rights set
27 forth in this chapter to each hotel worker at the time of hire or on the
28 effective date of the ordinance codified in this chapter, whichever is later.
29 Such written notice shall be provided in English, Spanish and any other
30 language spoken by five percent or more of the hotel workers employed by
31 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
37 rebuttable presumption that an adverse employment action taken against a
38 hotel worker within ninety days of the hotel worker's exercise of rights under
39 this chapter was taken in retaliation for the exercise of such rights.
40

41 **10.90.070 Relationship to employment contracts and agreements.**
42 **[Supersession by collective bargaining agreement.]**
43

44 This chapter applies to all employees as defined herein regardless whether
45 they are represented for purposes of collective bargaining or are covered by
46 a collective bargaining agreement. Nothing in this chapter shall be
47 construed to invalidate or limit the rights, remedies and procedures of any
48 contract or agreement that provides greater or equal protection for
49 employees than are afforded by this chapter.
50

51 [The provisions of sections 10.90.030 and 10.90.040, or any part thereof,

~~may be waived pursuant to a bona fide collective bargaining agreement, but only if the waiver is expressly set forth in clear and unambiguous written terms. Neither party to a collective bargaining relationship may waive or supersede any provision of this chapter by means of unilaterally imposed terms and conditions of employment.]~~

10.90.080 Civil remedies.

- 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 all violations. 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 March 11 ~~[January 31]~~, 2022, the Municipal[ITY] 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:

1
2
3

Municipal Clerk