ANCHORAGE, ALASKA
AO No. 2017-119(S), As Amended

AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING
ANCHORAGE MUNICIPAL CODE TITLE 15 TO RECOGNIZE AND ENUMERATE
THE PRESENCE OF SIGNIFICANT VISIBLE MOLD IN HOTELS AS A
PROHIBITED PUBLIC NUISANCE; TO CLARIFY THAT HOTELS AND OTHER
VISITOR ACCOMMODATIONS ARE EXCLUDED FROM THE SCOPE OF THE
ANCHORAGE HOUSING MAINTENANCE AND OCCUPANCY CODE;
AMENDING TITLE 23 [AMC SECTION 23.70.702] TO INCLUDE [UNSAFE]
SIGNIFICANT VISIBLE [OR SUBSTANTIAL] MOLD GROWTH IN THE
DEFINITIONS OF "UNSAFE BUILDING" AND "UNFIT FOR HUMAN
OCCUPANCY" IN THE DANGEROUS BUILDINGS PROVISIONS; AND
AMENDING TITLE 14 [SECTION 14.60.030] TO PROVIDE FOR CIVIL
PENALTIES.

WHEREAS, the significant presence of mold in hotels and other visitor
accommodations is beyond the control and ability of guests to address during their stay and worthy of enumeration as a public nuisance and abatement by the Department of Health and Human Services enforcement under AMC chapter 15.20; and

WHEREAS, the presence of mold in indoor living and sleeping areas has been linked to adverse health consequences, which can be serious and even deadly for those prone to allergic reactions; and

WHEREAS, allowing hotel operators to rent rooms or permit the public in other areas with significant mold exposures poses a health risk to both tourists and Alaska residents; and

WHEREAS, if exposure to mold in an Anchorage hotel causes a serious medical incident, it and the resulting negative publicity could have serious economic consequences for Anchorage and the statewide visitor industry; and

WHEREAS, because of the variety of mold types and the variety of reactions to them in different people, there is no established safe level of mold exposure; and

WHEREAS, the World Health Organization, the California Department of Public Health and other public health entities have instead established a standard that any significant visible mold in an indoor inhabited area should be quickly cleaned up and the source of the moisture removed or contained; and

WHEREAS, currently there is no clear authority for the Municipality to order the operator of a hotel or other visitor accommodation to address significant visible mold in hotel rooms and public areas and hold them responsible for removal or remediation for the protection of their guests; and
WHEREAS, Anchorage Municipal Code (AMC) chapter 15.10, the Housing
Maintenance and Occupancy Code within the Municipality of Anchorage, is not
intended to regulate hotels, motels, or other visitor accommodations for rent with an
average stay of less than 30 days; and

WHEREAS, the purpose of this ordinance is to establish the authority of the
Municipality to address this issue on a complaint driven basis without adding
significant new administrative or other burdens on the visitor industry; now,
therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code section 15.20.010 is hereby amended to
read as follows (language indicating no amendment is included for context only and
other subsections not affected are not set out):

15.20.010 - Definitions.

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

*** *** ***

Hotel shall mean any building or facility used for visitor
accommodations as defined in Title 21 and meeting the definitions of “hotel/
motel[,]” or “extended-stay lodging,” [or “inn[,]” as those specific commercial
use types are defined in section 21.05.050 of this code.

Hotel employee shall mean any individual who has been employed or
contracted by a hotel operator for the purpose of providing services at a hotel.
This definition shall include any individual who is employed by a person or
entity that has contracted to provide such services.

Hotel operator shall mean any person or entity that owns, controls
and/or operates a hotel.

*** *** ***

Mold shall mean any form of multicellular fungi that live on plant or
animal matter in an indoor environment. Types of mold include, but are not
limited to: cladosporium, penicillium, alternaria, aspergillus, fuarim,
trichoderma, mennoniella, mucor, and stachybotrys chartarum. Laboratory
testing to identify the species of a fungi as a type of mold is not required, if
the appearance, smell and other observations of the common senses make
it reasonable to conclude a particular substance is mold.

*** *** ***

Significant when used to describe the presence of mold shall
mean mold that is present on surfaces such as walls, wall cavities,
wallpaper, carpeting, ceilings, piping, ventilation systems, or other
interior building structures where moisture is not intended to
accumulate or where mold is not customarily found, but does not
include minor mold or mildew found on surfaces that can accumulate
moisture as part of their proper and intended use when maintained in
proper repair.

*** *** ***

(GAAB 18.15.010, 18.20.020, 18.20.050; CAC 8.10.010, 8.10.050; AO No.
79-63; AO No. 92-129(S); AO No. 97-109(S), § 1, 6-26-97; AO No. 2003-130,
§§ 2, 3, 10-7-03; AO No. 2009-83(S), § 1, 7-7-09; AO No. 2016-81(S), § 1,
8-25-16 )

Section 2. Anchorage Municipal Code section 15.20.020 is hereby amended to
read as follows (language indicating no amendment is included for context only and
other subsections not affected are not set out):

15.20.020 – Public nuisances prohibited; enumeration.

A. No person shall allow, maintain, or permit a public nuisance to exist or
allow, maintain, or permit recurrence of a public nuisance. Such
existence, allowance, maintenance, permitting, or recurrence of a
public nuisance is a violation of this chapter.

B. Public nuisances include, but are not limited to, the following acts and
conditions:

*** *** ***

16. Mold in visitor accommodations. The presence of significant
visible mold on or in a hotel is a public nuisance. The Municipality
may order [shall engage in] efforts to remediate and prevent
significant mold in hotels and require and enforce abatement of mold
as provided for in section 15.20.106.

*** *** ***

(GAAB 16.68.110, 18.15.020, 18.15.030, 18.20.030, 18.20.060; CAC
8.10.020, 8.10.050; AO No. 113-76; AO No. 78-48; AO No. 79-63; AO No.
93-173(S), § 3, 2-24-94; AO No. 95-42, § 3, 3-23-95; AO No. 2001-145(S-1),
§ 12, 12-11-01; AO No. 2003-130, § 4, 10-7-03; AO No. 2009-83(S), § 2, 7-
7-09; AO No. 2010-43(S), § 1, 6-22-10; AO No. 2010-63, § 1, 9-14-10; AO
No. 2011-52, § 1, 4-26-11; AO No. 2016-81(S), § 2, 8-25-16 )

Section 3. Anchorage Municipal Code chapter 15.20 is hereby amended by
adding a new section 15.20.106 to read as follows:

15.20.106 – Mold in hotels; abatement, remediation and prevention
measures; enforcement.

A. Complaint of mold, order and action for abatement. Any person may
submit a complaint of the presence of visible mold or effects of
exposure to mold in a hotel to the director. If the director receives a
credible complaint of significant visible mold [growth] on or in a
hotel building or facility from a hotel guest or hotel employee, the
director shall [promptly] inspect the area of the hotel premises
alleged to have mold. In addition to the procedures described in this
section, all powers of the director existing in Title 15 shall apply to
visible mold abatement, prevention and enforcement including, but not
limited to, fees, penalties, fines, inspections, compliance agreements,
compliance orders, emergency orders, enforcement orders, recovery
of fees and administrative costs incurred in enforcement actions
[costs of abatement and damages], and injunctive relief. Violations
are subject to civil penalties as prescribed in section 14.60.030.

1. If significant visible mold growth is discovered on or in a hotel,
the director may issue a notice of violation as authorized by this
title directing the hotel operator(s) to remove and clean up the
mold and remediate the area by a specific date and require a
reinspection. The initial notice of violation shall state a civil
penalty and [as set forth in section 14.60.030] will be
imposed if the visible mold identified at the initial inspection is
not completely removed to the satisfaction of the director at the
time of reinspection, and that failure to remove and clean up
mold shall subject the hotel operator to additional penalties and
enforcement actions. Additionally, the director shall have the
power to order the repair of the source of the moisture
[and/or replacement of components, facilities and
equipment that substantially contribute to creating
conditions conducive to mold growth including, but not
limited to, visible water damage, excessive indoor
moisture sources, and insufficient heating, ventilation and
air-conditioning systems].

2. If upon reinspection of the hotel area following the initial notice
of violation, or upon any subsequent reinspections as deemed
necessary by the director, significant visible mold continues to
be present and the director determines the hotel operator failed
to take adequate action to correct the condition or repair or
replace facilities or equipment as ordered, the director may take
any one or combination of the following actions:

a. Impose the civil penalties stated in the initial notice of
violation;

b. Issue an additional notice of violation with a specific date
that removal, clean up, or repair and/or replacement of
equipment or materials must be completed, with civil
penalties [as provided in section 14.60.030] to be
imposed for the subsequent violations for failure to
do so upon a reinspection;

c. Placard the hotel area, and any areas of the hotel that
may reasonably expose persons to substantial airborne
mold from the significant visible mold, and order hotel rooms or areas placarded to be vacated within a reasonable time. Tampering with a placard placed as ordered by the director shall subject the violator to a civil penalty. The placard shall indicate the hotel room or area is unfit for human habitation and is closed to all persons except those authorized by the director to enter; or

[d. The municipality may cause abatement of the mold violation and assess the abatement costs and any administrative fees to the hotel operator(s). The director shall give notice of intent to cause mold abatement to the hotel operator, and shall have right of entry for any persons authorized by the director to perform the abatement. An account of the costs shall be kept and a bill for collection forwarded to the hotel operator(s) as provided in this chapter. Costs under this subsection are a lien against the real property of the hotel.]

B. Subsequent violations. If, after a second notice of violation of significant visible mold in the same area of the hotel, the hotel operator fails to adequately respond to orders to abate significant visible mold or environmental factors contributing to mold growth, the director may issue additional civil penalties, post public notices ascribing to the presence of mold, or close areas or rooms of the hotel. The director is not required to use or exhaust all actions in subsection A.2. prior to taking action under this subsection.

C. Evacuation and closure. If a hotel operator continues to fail to adequately abate significant visible mold or environmental factors contributing to mold growth under this section, or [and] the director determines the presence of significant mold presents a significant public health hazard, the director may:

1. order the cessation of hotel operations, evacuation and closure of the hotel until such time as violations of this section are abated, or

2. refer the hotel operator to development services as a dangerous building under section 23.70.702. [At any time if the director has reasonable cause to believe the presence of mold is an imminent hazard to life, health, welfare or public safety, or render the hotel unsanitary, unfit for human occupancy, or in such a condition it is likely to cause sickness or disease, the director may order the hotel to be vacated and closed. ] A hotel vacated and closed under this subsection may not reopen any portion of the hotel to employees or the public without the written approval of the director. [In an order to vacate and close a hotel or hotel
area, the director shall state a date as soon as practicable that the hotel or hotel area must be vacant of all guests and unauthorized hotel employees; failure to vacate by that date subjects the hotel operator to civil penalties as provided in section 14.60.030.]

D. **Violation of closure.** Any person who, without authority from the director to do so, enters an area of a hotel placarded, closed or vacated under this section is subject to a civil penalty as provided in section 14.60.030.

E. **Whistleblower protection.** A hotel employee who takes any lawful act under this section, including making a complaint of the presence of mold to the director or any other person, shall not be subjected to any adverse employment action by the hotel operator or employer because of such act. Such a hotel employee shall have the same rights and entitled to the same relief to make the hotel employee whole as a government false or fraudulent claims whistleblower under section 1.60.120. If a hotel operator or employer takes any adverse employment action against a hotel employee protected by this section, the hotel employee may bring an action in the appropriate court for the relief provided by this section.

**Section 4.** Anchorage Municipal Code section 14.60.030 is hereby amended to read as follows (the remainder of the section is not affected and not set out):

**14.60.030 Fine Schedule**

The fine schedule under this chapter is as follows:

<table>
<thead>
<tr>
<th>Code Section</th>
<th>Offense</th>
<th>Penalty / fine</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>First failure after NOV</strong></td>
<td>$250</td>
</tr>
<tr>
<td>15.20.106A.</td>
<td><strong>Second failure</strong></td>
<td>$500</td>
</tr>
<tr>
<td></td>
<td><strong>Each subsequent failure to remove and remediate by ordered date</strong></td>
<td>$2,500 [1,000]</td>
</tr>
<tr>
<td>15.20.106A.2.c.</td>
<td><strong>Tampering with Placard warning of mold</strong></td>
<td>$500</td>
</tr>
<tr>
<td>15.20.106C.</td>
<td><strong>Failure to vacate and close areas to the public</strong></td>
<td>$1,000/day</td>
</tr>
<tr>
<td>15.20.106D.</td>
<td><strong>Unauthorized entry to closed hotel areas</strong></td>
<td>$100</td>
</tr>
</tbody>
</table>
Section 5. Anchorage Municipal Code section 15.10.040 is hereby amended to read as follows (language indicating no amendment is included for context only and other subsections not affected are not set out):

15.10.040 – Definitions.

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B. The following definitions shall apply in the interpretation and enforcement of this chapter:

*** *** ***

Dwelling shall mean any enclosed space wholly or partly used or intended to be used for living, sleeping, cooking and eating; provided that
temporary housing and hotels as hereinafter defined shall not be classified as a dwelling. Industrialized housing and modular construction which conform to the nationally accepted industry standards and used or intended for use for living, sleeping, cooking, and eating purposes shall be classified as dwellings.

*** *** ***

Guest shall mean an individual who shares a dwelling unit in a nonpermanent status for not more than 30 days.

*** *** ***

Hotel shall mean any building or facility used for visitor accommodations as defined in Title 21 and meeting the definition of a “hotel/motel[,]” or “extended-stay lodging[,]” [or “inn”] as those specific use types are defined in section 21.05.050 of this code.

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Roominghouse shall mean any dwelling other than a hotel or motel or that part of any dwelling, containing one or more rooming units, and/or one or more dormitory rooms, and in which persons either individually or as families are housed with or without meals being provided.

*** *** ***

Temporary housing shall mean any tent, trailer, mobile home, or any other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utility system on the same premises for more than 30 consecutive days.

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(AO No. 2016-76(S), § 6, 7-12-16)

Section 6. Anchorage Municipal Code section 23.70.702 is hereby amended to read as follows (language indicating no amendment is included for context only and other subsections not affected are not set out):

23.70.702 - Definitions.

23.70.702.1 General. For the purpose of this chapter, certain terms, phrases, words and their derivatives shall be construed as specified in either this chapter or as specified in the code. Where terms are not defined, they shall have the ordinary accepted meanings within the context with which they are used. Webster's Dictionary shall be construed as providing ordinary accepted meanings. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

*** *** ***

Unfit for human occupancy - a building or structure is unfit for human occupancy whenever the code official finds such structure is unsafe, unlawful or because of the degree to which the building or structure is in disrepair or
lacks maintenance, is unsanitary, vermin or rat infested, contains filth and contamination, contains [an unsafe] significant [presence of] visible mold, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the building or structure constitutes a hazard to the occupants of the building or structure or to the public.

*** *** ***

Unsafe building or structure - is one found to be dangerous to the life, health, property or safety of the public or the occupants of the building or structure by not providing the minimum safeguards to protect or warn occupants in the event of fire, or because such building or structure contains unsafe equipment or is so damaged, decayed, dilapidated, contains significant visible [substantial-unsafe] mold [growth], structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

*** *** ***

( AO No. 2015-127, § 1, 4-1-16 )

Section 7. If any section of this ordinance, or portion thereof, or any section of the code adopted by this ordinance, or portion thereof, is deemed or declared unconstitutional, invalid or otherwise contrary to law, that portion is severable and the remainder shall continue in full force and effect.

Section 8. This ordinance shall be effective thirty days after[immediately upon] passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 10th day of October, 2017.

Chair

ATTEST:

Municipal Clerk