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

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.

WHEREAS, the coronavirus global pandemic emergency has heavily impacted
travel and the hospitality industry, decimating tourism revenues for many popular
destinations including Alaska; and

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

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

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

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

THE ANCHORAGE ASSEMBLY ORDAINS:

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

CHAPTER 10.90  LABOR – DISPLACED WORKERS PROTECTION

10.90.010  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:
“Affected hotel” means:
1. in the event of a change in control as defined in part 1. for that term below, the hotel or discrete portion of the hotel that has been the subject of the change in control and remains in operation following the change in control; or
2. in the event of a change in control as defined in part 2. or 3. for that term below, the hotel that remains in operation following the change in control of that hotel.

“Change in control” means:
1. any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a hotel or a discrete portion of the hotel that continues in operation as a hotel;
2. any sale, assignment, transfer, contribution, or other disposition of a controlling interest (including by consolidation, merger, or reorganization) of a hotel employer or any person who controls a hotel employer; or
3. any other event or sequence of events (including a purchase, sale, lease, or termination of a management contract or lease) that causes the identity of the hotel employer at a hotel to change.

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

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

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

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

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

“Hotel worker” means any person who is employed by a hotel
employer to provide services at a hotel. “Hotel worker” does not include a
managerial, supervisory or confidential employee.

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

“Incumbent hotel employer” means a hotel employer who owns,
controls, or operates a hotel prior to a change in control of the hotel or of a
discrete portion of the hotel that continues to operate as a hotel after the
change in control.

“Laid-off Employee” means a hotel worker who was employed by the
employer for

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

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

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

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

“Successor hotel employer” means a hotel employer who owns,
controls, or operates a hotel after a change in control.

10.90.020 Notice of change in control.

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

B. This written notice shall include, but not be limited to, the name and
contact information of the incumbent hotel employer, the name and
contact information of the successor hotel employer, and the
effective date of the change in control.
C. This written notice shall be posted in a conspicuous place at the
affected hotel and shall be readily visible to eligible hotel workers,
other employees, and applicants for employment.

10.90.030 Hotel worker retention.

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

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

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

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

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

D. An eligible hotel worker retained pursuant to this section shall be
employed under terms and conditions established by the successor
hotel employer or as required by law and **during the hotel worker
retention period** shall not be discharged except for good cause
based on individual performance, **or** conduct, **but may be
furloughed in a reduction in force due to the hotel’s staffing
requirements.**
E. [D.] An offer of employment made pursuant to subsection B. shall be made in writing and shall remain open for at least ten [business] days from the date of the offer.

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

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

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

10.90.040   Right to Recall

A. A [An] hotel employer shall offer its laid-off employees in writing, to their last known physical address, and by email and text message to the extent the employer possesses such information, all job positions which become available after this chapter's effective date for which the laid-off employees are qualified. A laid-off employee is qualified for a position if the employee:
1. held the same or similar position at the hospitality enterprise at the time of the employee's most recent separation from active service with the employer; or
2. is or can be qualified for the position with the same training that would be provided to a new employee hired into that position.

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

B. A laid-off employee who is offered a position pursuant to this chapter shall be given no less than seven [ten] days in which to accept or decline the offer.
C. A hotel employer that declines to recall a laid-off employee on the grounds of lack of qualifications and instead hires someone other than a laid-off employee shall provide the laid-off employee a written notice within 30 days identifying all reasons for such decision.

D. The requirements of this **section [chapter]** also apply in the following circumstances:

1. **A change in control of the hotel occurred** [The ownership of the hotel employer changed] after the separation from employment of a laid-off employee but the enterprise is conducting the same or similar operations as before **March 11 [January 31]**, 2020;

2. The form of organization of the hotel employer changed after **March 11 [January 31]**, 2020;

3. Substantially all of the assets of the hotel employer were acquired by another entity which conducts the same or similar operations using substantially the same assets;

4. The hotel employer relocates the operations at which a laid-off employee was employed before **March 11 [January 31]**, 2020 to a different location within the municipality; and

5. Any combination of the circumstances described in subsections 1. through 4.

10.90.050  Notice.

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

10.90.060  Retaliatory action prohibited.

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

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

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

[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 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