ANCHORAGE, ALASKA
AO No. 2020-84

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 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
“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 any 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. six months or more in the 12 months preceding January 31, 2020, and whose most recent separation from active service occurred after January 31, 2020, or
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 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.

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, 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. 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.

C. An eligible hotel worker retained pursuant to this section shall be
employed under terms and conditions established by the successor hotel employer as required by law and shall not be discharged except for good cause based on individual performance or conduct.

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.

E. A successor hotel employer shall retain written verification of each offer of employment made pursuant to subsection 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.

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 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.

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. 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 ten days in which to accept or decline the
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 chapter also apply in the following circumstances:
   1. 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 January 31, 2020;
   2. The form of organization of the hotel employer changed after 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 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 Supersession by collective bargaining agreement.

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

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

We request your support for the ordinance.

Prepared by: Assembly Counsel
Respectfully submitted: Felix Rivera, Assembly Chair
District 4, Midtown Anchorage

Forrest Dunbar, Assembly Member
District 5, East Anchorage