

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

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 LARGE**
4 **HOTEL EMPLOYERS TO OFFER REHIRE TO EMPLOYEES LAID OFF IN**
5 **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 hotel
20 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 continue
24 employment at those premises, without overly burdening a hotel owner's economic
25 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 pandemic
29 or future crises, or after a change in hotel ownership or operator; now, therefore,

30
31 **THE ANCHORAGE ASSEMBLY ORDAINS:**

32
33 **Section 1.** Anchorage Municipal Code is hereby amended to add a new Chapter
34 10.90 to read as follows:

35
36 **CHAPTER 10.90 LABOR – DISPLACED WORKERS PROTECTION**

37
38 **10.90.010 Definitions.**

39
40 The following words, terms and phrases, when used in this chapter, shall
41 have the meanings ascribed to them in this section, except where the context
42 clearly indicates a different meaning:
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1 "Affected hotel" means:

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

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

9
10 "Change in control" means:

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

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

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

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

23
24 **"Customary seasonal work" means seasonal work, as that term**
25 **is defined in AS 23.30.220(c)(1), that has previously been performed by**
26 **an employee during approximately the same part of at least one**
27 **previous calendar year.**

28
29 "Eligible hotel worker" means a hotel worker employed by an
30 incumbent hotel employer at the time of a change in control and who has
31 been so employed for at least two months prior to the change in control.

32
33 "Hotel" means an establishment containing 100 or more guest rooms
34 that provides temporary lodging in the form of overnight accommodations in
35 guest rooms to transient patrons for periods of thirty consecutive calendar
36 days or less, and may provide additional services, such as conference and
37 meeting rooms, restaurants, bars, or recreation facilities available to guests
38 or to the general public. "Hotel" includes motor lodges, motels, apartment
39 hotels, and tourist courts meeting the definition set forth above. "Hotel" also
40 includes any contracted, leased or sublet premises operated in conjunction
41 with a hotel or that is used for the primary purpose of providing services at a
42 hotel. "Hotel" does not include a hostel, which is a lodging facility primarily
43 characterized by dormitory-style accommodations, shared bathrooms, and
44 reservations of beds rather than rooms. "Hotel" also does not include
45 corporate housing, rooming houses, boarding houses, or private residential
46 clubs, single-room occupancy housing, vacation rentals, or bed and
47 breakfast establishments within a single-unit residence.

48
49 "Hotel employer" means any person who owns, controls, or operates
50 a hotel in the municipality, and includes any person or contractor who, in a
51 managerial, supervisory, or confidential capacity, employs hotel workers to

1 provide services at a hotel in conjunction with the hotel's purpose.

2
3 "Hotel worker" means any person who is employed by a hotel
4 employer to provide services at a hotel. "Hotel worker" does not include a
5 managerial, supervisory or confidential employee.

6
7 "Hotel worker retention period" means the period of time beginning on
8 the date of a change in control and extending to ninety (90) days from the
9 first date that an affected hotel is open to the public after a change in control.

10
11 "Incumbent hotel employer" means a hotel employer who owns,
12 controls, or operates a hotel prior to a change in control of the hotel or of a
13 discrete portion of the hotel that continues to operate as a hotel after the
14 change in control.

15
16 "Laid-off Employee" means a hotel worker who was employed by the
17 employer for

18 ~~[4.]~~ three [six] months or more in the 12 months preceding March
19 11 [January 31], 2020, and whose most recent separation from active
20 service, or failure to be scheduled for customary seasonal work,
21 occurred after March 11 [January 31], 2020, ~~[or]~~

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

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

26
27 "Length of Service" means the total of all periods of time during which
28 a hotel worker has been in active service, including periods of time when the
29 employee was on leave or on vacation.

30
31 "Successor hotel employer" means a hotel employer who owns,
32 controls, or operates a hotel after a change in control.

33
34 **10.90.020 Notice of change in control.**

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36 A. Within five days of a change in control, a successor hotel employer
37 shall post written notice of the change in control at the location of the
38 affected hotel. This written notice shall remain posted during any
39 closure of the affected hotel and for six months following the first date
40 on which the affected hotel is open to the public under the successor
41 hotel employer.

42
43 B. This written notice shall include, but not be limited to, the name and
44 contact information of the incumbent hotel employer, the name and
45 contact information of the successor hotel employer, and the effective
46 date of the change in control.

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48 C. This written notice shall be posted in a conspicuous place at the
49 affected hotel and shall be readily visible to eligible hotel workers,
50 other employees, and applicants for employment.

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10.90.030 Hotel worker retention.

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- 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.

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2 G. The rights to retention set forth in this section do not apply to any
3 managerial, supervisory, or confidential employee and do not include
4 the right to retain any supervisory or management responsibility.
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6 **10.90.040 Right to Recall**
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- 8 A. An hotel employer shall offer its laid-off employees in writing, to their
9 last known physical address, and by email and text message to the
10 extent the employer possesses such information, all job positions
11 which become available after this chapter's effective date for which
12 the laid-off employees are qualified. A laid-off employee is qualified
13 for a position if the employee:

- 14 1. held the same or similar position at the hospitality enterprise at
15 the time of the employee's most recent separation from active
16 service with the employer; or
17 2. is or can be qualified for the position with the same training that
18 would be provided to a new employee hired into that position.

19 The employer shall offer positions to laid-off employees in an order of
20 preference corresponding to categories 1. and 2. in the preceding
21 sentence. Where more than one employee is entitled to preference
22 for a position, the employer shall offer the position to the laid-off
23 employee with the greatest length of service for the hospitality
24 enterprise.
25

- 26 B. A laid-off employee who is offered a position pursuant to this chapter
27 shall be given no less than ten days in which to accept or decline the
28 offer.
29

- 30 C. A hotel employer that declines to recall a laid-off employee on the
31 grounds of lack of qualifications and instead hires someone other than
32 a laid-off employee shall provide the laid-off employee a written notice
33 within 30 days identifying all reasons for such decision.
34

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

- 37 1. The ownership of the hotel employer changed after the
38 separation from employment of a laid-off employee but the
39 enterprise is conducting the same or similar operations as
40 before **March 11 [January 31]**, 2020;
41 2. The form of organization of the hotel employer changed after
42 **March 11 [January 31]**, 2020;
43 3. Substantially all of the assets of the hotel employer were
44 acquired by another entity which conducts the same or similar
45 operations using substantially the same assets;
46 4. The hotel employer relocates the operations at which a laid-off
47 employee was employed before **March 11 [January 31]**, 2020
48 to a different location within the municipality; and
49 5. Any combination of the circumstances described in subsections
50 1. through 4.
51

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.

1 **Section 2. Report to the Assembly.** On or before **March 11** ~~January 31~~, 2022,
 2 the Municipal[ITY] Manager shall report to the Assembly on the effectiveness of
 3 Section 10.90.040 in promoting employment stability and shall advise the Assembly
 4 on the need for further action.

5
 6 **Section 3.** This ordinance shall be effective immediately upon passage and
 7 approval by the Assembly.

8
 9
 10 PASSED AND APPROVED by the Anchorage Assembly this ___ day of _____, 2020.

11
 12
 13
 14
 15 _____
 Chair

16 ATTEST:

17
 18
 19
 20 _____
 21 Municipal Clerk



MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM

No. AM 444-2020(A)

Meeting Date: August 25, 2020

1 **From:** Assembly Chair Rivera and Assembly Member Dunbar
2
3 **Subject:** **AO 2020-84(S): AN ORDINANCE OF THE ANCHORAGE ASSEMBLY**
4 **PROVIDING PROTECTION FOR HOTEL WORKERS' EMPLOYMENT**
5 **BY AMENDING ANCHORAGE MUNICIPAL CODE WITH A NEW**
6 **CHAPTER REQUIRING LARGE HOTEL EMPLOYERS TO OFFER**
7 **REHIRE TO EMPLOYEES LAID OFF IN RELATION TO THE COVID-**
8 **19 PANDEMIC, AND TO RETAIN ELIGIBLE WORKERS FOR A**
9 **PERIOD OF TIME AFTER A CHANGE IN OWNERSHIP OR**
10 **CONTROL, AND THEREAFTER CONSIDER OFFERING THEM**
11 **CONTINUED EMPLOYMENT.**
12

13 The S-version of the proposed Ordinance makes a few substantive changes in order
14 to align with the Municipality's date of declaring the Coronavirus emergency, and to
15 add seasonal workers in the class with a right to recall. Several preamble paragraphs
16 are also added to clarify the purpose and intent of the ordinance. Significant changes
17 are as follows:
18

- 19 • The term "customary seasonal work" is added to the definitions section, and is
20 modeled after the definition in the Alaska Workers' Compensation Act. (p. 2,
21 lines 24-27)
- 22 • In the definition of "laid-off employee" (p. 3 lines 16-25):
 - 23 ○ Seasonal workers are included by adding the term customary seasonal
24 work. This will provide them the right of recall in section 10.90.040.
 - 25 ○ The length of prior work with the hotel is reduced from 6 of the past
26 twelve months to 3 of the past twelve. This acknowledges the short
27 seasonal employment period in Alaska during our summer months.
 - 28 ○ The date established from which counting preceding employment is
29 changed to March 11, 2020 to align with the date of the Mayor's
30 Emergency Proclamation due to the COVID-19 pandemic.
 - 31 ○ A phrase relating to a change in control is deleted as a drafting error.
32 The Right to Recall in section 10.90.040 is specific to laid-off
33 employees and the definition is tailored towards that right. The worker
34 retention right is specific to changes in ownership for eligible
35 employees. This change aligns the definition and avoids conflating the
36 right to recall and mixing the two distinct protections.
- 37 • The fixed date from which to calculate an employee's right to recall is changed
38 to March 11, for the same reasons as above, in new section 10.90.040D. (p. 5
39 lines 35-47)
- 40 • The date of the required report of the Mayor on the effectiveness of rehiring
41 under the right to recall provided by this ordinance is changed to align with two
42 years following the Proclamation of Emergency.
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We request your support for the Substitute version of the ordinance.

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

Forrest Dunbar, Assembly Member
District 5, East Anchorage