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Examining New York City's Controversial Hotel Licensing Bill

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With support from New York City's influential hospitality union, the Hotel and Gaming Trades Council, AFL-CIO, a bill has been introduced in the New York City Council seeking to impose licensing requirements on hotels.

Positioned as a response to rising crime at city hotels, the "Safe Hotels Act" has provoked strong reactions by the industry, with many denouncing it as intended to make it easier for the hotel union to organize hotel employees and to expand its influence, not to address any genuine safety concerns.

After significant objections, the bill has been watered down but is still viewed as an existential threat by many in the industry. This article provides an overview of the draft legislation and considers potential legal challenges to the bill if it is passed into law.

Credit: Vlad Kochelaevskiy/Adobe Stock

The Proposed Law

The draft bill, known as "Int. 991-2024," would require hotel owners to apply to the Commissioner of the New York City Department of Consumer and Worker Protection for a nontransferable license which must be renewed every two years.

Key provisions of the bill include a requirement that "core employees," defined to include housekeeping, front desk, front service and engineering staff, be directly employed by the owner of the hotel; continuous coverage of the front desk; at least one security guard on the premises at all times if a hotel contains more than 100 guest rooms; mandatory daily cleaning of guest rooms; and panic buttons for all employees that enter occupied guest rooms. The bill expressly forbids contracting with third parties for "core employees," including through staffing agencies. The bill would also require compliance with currently unknown regulations to-be-issued "as the commissioner deems necessary." In apparent recognition that the Commissioner will issue regulations imposing further obligations, the bill contains numerous defined

terms that are not referenced in the substantive language of the bill.

Industry reaction has been uniformly hostile to the bill, with many saying the bill would upend the business model of how many New York City hotels are operated. As is common throughout the industry, hotel owners in New York City often contract with third-party operators to oversee the day-to-day management of a hotel, including the employment and supervision of hotel staff. In fact, many hotel brands affirmatively require owners to engage professional third-party operators to ensure operational standards are met, with some others even requiring hotel owners to engage the brand itself to operate a property.

At some hotels, additional roles and functions are routinely outsourced to other third parties, such as staffing agencies, for similar reasons. Under the proposed bill, however, all such agreements would be impermissible and use of a non-owner operator or staffing agency to source "core employees" would be grounds for denial or revocation of a hotel license.

An initial version of the bill, which was amended after an uproar by hotel industry stakeholders (an uproar which continues unabated), went even further, precluding approval of construction documents or the issuance of a certificate of occupancy until a hotel license was issued; imposing detailed application, recordkeeping, and reporting requirements; requiring the hotel to prepare, submit for approval and comply with a detailed "sanitation policy;" expressly permitting the Commissioner to consider objections by local officials as grounds for denying a license or a license renewal; and, most notably, conditioning the right of a hotel owner to contract out the management of certain employees on verification that the majority of hotel staff were covered by a collective bargaining agreement with a labor organization.

Industry Reactions

Hotel industry groups have uniformly and vigorously objected to the bill, arguing that the added costs it would impose would be a death knell to many already struggling hotels, leading to loan defaults, hotel closures and employee layoffs. They have challenged various provisions as failing to consider ordinary hospitality operations and consumer preferences, arguing it will outlaw hotel management companies which, as discussed above, are widely used in New York City and often required by hotel brands as part of licensing and/or franchising.

Opponents of the law have also questioned the purpose of the bill—allegedly protecting staff and guests—contending that the data does not support claims that hotels present a larger danger than other businesses, and challenging the efficacy of the methods by which the bill proposes to address crime at hotels in any event, noting, for example, that many guests do not wish their room to be accessed every day. Critics of the bill have argued the true motives behind the bill do not relate to hotel guest and employee safety.

The Hotel and Gaming Trades Council has actively campaigned for the passage of the bill, arguing that the safety of its constituents is at stake. According to news reports, in the last few years, the Hotel and Gaming Trades Council has donated over $700,000 in campaign contributions to some of the bill's sponsors.

Potential Challenges to the Law

The proposed bill, if passed, may be susceptible to legal challenges from various impacted parties, including hotel owners, hotel operators, and third parties who provide staffing services which would be outlawed under the bill. While the bill remains subject to further changes and is not yet law, in its current form there appear to be numerous grounds for a challenge, including:

Unclear Definitions and Improper Delegation. The bill does not identify the particular requirements for obtaining and maintaining a license, nor the grounds upon which a license can be revoked save for the few enumerated staffing and "safety"

obligations. Given the dearth of directives by the legislature, the bill sponsors seemingly contemplate delegating to the Commissioner the broad authority to dictate appropriate rules and regulations for hotel licenses. But such broad delegation of authority to the Commissioner may represent an unlawful abdication of the legislature's duty to write laws, granting the Commissioner significant powers to set laws and policy. Moreover, when coupled with the numerous defined but unused terms in the proposed bill—many of which have nothing to do with staff or guest safety—the legislature may be granting the Commissioner the power to deny or revoke a license based on issues that have nothing to do with the stated purpose of the bill.

Unnecessary Burdens on Hospitality Contracts and Hotel Owners. Municipalities have wide latitude to pass laws regulating issues that affect the health and safety of their populace. But such powers are constrained by constitutional and statutory principles, including that a statute must be reasonably related to the intended policy goal. Moreover, courts more closely examine laws targeting a particular group. This may be another avenue for legal challenge.

Specifically, the proposed bill prohibits the use of hotel operators or staffing agencies as employers for certain hotel staff. But the stated purpose of the bill—guest and worker safety—seemingly has little connection to this requirement, and the profound negative effects on the hospitality industry and its major stakeholders arguably outweigh any stated policy goal. This lack of connection is exacerbated, it may be argued, because the law targets a specific class of companies in the hospitality industry.

There are other potential downstream consequences if the law is passed, giving rise to further legal challenges. On top of significant increases in costs—largely associated with mandated increased staffing and cleaning, as well as the need to administer many new employees—the bill would make it harder not just to open new hotels, but to sell existing ones. As drafted, a hotel license cannot be assigned, introducing a new point of uncertainty in hotel transactions and likely meaning that every purchase and sale of a hotel will require one of the following: (i) the granting of a license as a precondition to closing, which may be administratively unfeasible, (ii) a temporary hotel closure for the period between closing and issuance of a license, leading to displaced guests and operational havoc, or (iii) the rise of conversions of hotel properties to other uses, leading to reduced supple and staff layoffs.

Given these restrictions, lenders may also hesitate to venture into the hospitality space due to the new complications of utilizing ordinary enforcement mechanisms, such as a deed-in-lieu (as the lender will not be able to operate a hotel absent a license, which is non-assignable) or a foreclosure sale (with purchasers wary of the same hurdles discussed above). In all instances, these new hurdles are likely to complicate and suppress (if not inhibit) hotel market liquidity.

Conclusion

Given the stated opposition by industry stakeholders, the bill is likely to face swift and varied challenges if passed. It remains to be seen if further amendments will be considered and if such amendments will ease industry concerns.

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