

Presentation: Briefing on Illegal Hotels and SROs (Illegal Hotel WG)

Presenters: Sarah Desmond, Executive Director, Housing Conservation Coordinators; Marti Weithman, Director, SRO Law Project, Goddard Riverside Community Center

Housing advocates and legal aid services first became aware of the illegal hotel situation in 2005, when tenants in various neighborhoods reported to have seen strangers, many of whom visibly tourists given the suitcases, coming in and out of their buildings and living in the apartments. Tenants became concerned with safety issue, such as random doorbell buzzing and propped doors, as well as quality-of-life impacts associated with the frequent turnover of building occupants. It has since morphed into an issue on affordable housing, as tenants became aware that such apartments are no longer used as rent-regulated residential units anymore, even though those units are still technically affordable housing. In response to the impending crisis, housing advocates formed a working group to explore the complaints in further detail. The working group now comprise of over 40 different organizations, with elected officials from all five boroughs participating as well.

Illegal hotel is defined as housing units in a residential building with three or more units that are leased for a period of occupancy of less than 30 days. This definition is consistent with the local law passed in 1989 governing the use and lease of housing units. At the time the situation surfaced during the previous mayoral administration, the City actually sought an injunction in an attempt to enjoin property owners from renting online. State Supreme Court granted the injunction, but Appellate Division of the State Supreme Court overturned it; furthermore, Appellate Division held that the multiple dwelling law of the state permits short-term rental of dwelling units, so long as less than 49% of the units in a building is used as such. The local law was found to be inconsistent with the state law.

In response to this ruling, local law against illegal hotels was passed in 2010. The law substantially increased the fines for illegal hotel operators and placed them into higher categories of offenses for civil penalty purposes. The local law was seen as a step-up from the previous \$800 per violation fine. Since its passage, however, this working group has witnessed a proliferation of online platforms, notable Airbnb, as a result of the rise of the “sharing economy” first popularized in the San Francisco Bay Area. Furthermore, advertising campaign from Airbnb claims that it helps of New York City residents to earn extra income through its online platform.

Recent report by State Attorney General Eric Schneiderman tells a different story. The report indicates that about 75% of Airbnb rentals are considered illegal hotels. It further states that 72% of Airbnb rentals are for a term of less than 30 days and that over 30,000 units are available on Airbnb in New York City alone. It has also found a positive correlation between the number of units on Airbnb and the level of rent increase, since illegal hotels remove housing units from the residential market and artificially reduces the overall supply of housing in a market already known to be extremely tight. Illegal hotel situation is also found to have a negative impact on the safety of other residents due to the presence of strangers not previously vetted. Illegal hotels are also in violation of the Hotel and Fire Code, which was developed with more stringent accessibility standards, heightened safety requirements and consideration for tourist hazards in mind. Illegal hotels are also lacking

in legal protection for both tenants and visitors who found the transaction unsatisfactory for any reason. In addition, landlords have also sued to evict tenants engaging in renting out rooms in their apartments on the ground of lease violation. In most instances, given the amount of legal fees and hassle required to fight an eviction ordered against them, tenants often simply leave, and it becomes possible for landlords to use the now-vacant unit as illegal hotels. At the most extreme, some residential buildings are found to have over 60% of its units used as illegal hotels.

Geographically, in Manhattan, illegal hotels exist in multiple neighborhoods. When the situation first arose, it was mainly in the west side of the island, but it has spread to the east side as well. Attorney General Schneiderman has also reported that Lower East Side, Chinatown, Chelsea, Hell's Kitchen, Greenwich Village and SoHo areas generate over 40% of illegal hotel revenues. It is also obvious that Airbnb is not the only online platform for illegal hotels.

In New York City, Mayor's Office of Special Enforcements is the lead agency in illegal hotel enforcement on the ground of consumer fraud. Changes to Fire Code, effective in December 2013, pre-empted this agency from investigating illegal hotel cases, despite its authority to issue citations against them. Housing advocates are now seeking to reverse this change and re-combine investigative powers with the authority to issue citations. Since renting out spare rooms in one's own apartment is legal and only subject to landlord restrictions in the case of tenants, Airbnb has gone onto the offensive to push for an outright repeal of the restriction on tenancies less than 30 days. With §421(a) law up for renewal in June 2015, it is altogether possible that provision to undermine the law against illegal hotels will find its way into the State Legislature as a rider amendment.

Borough President Brewer: Much of the technology community considers "sharing economy" as some sort of savior for the younger generation. The issue hits many younger, more recent arrivals hard, especially as most of them have long missed out on affordable housing and have no access to anything except market rate units. The report by Attorney General Schneiderman helps to answer many questions on the true nature of the much-vaunted "sharing economy" that has been in vogue lately. It is also true that Attorney General Schneiderman is seeing criticisms against him from the technology community. I hope this report will start to shed light on how illegal hotels and mean a pushback from rent regulation and tenant's rights. On a side note, I must also acknowledge the effort from Catherine McGee, who was formerly with Mayor's Office of Special Enforcements and now works for Attorney General Schneiderman. It is she who brought this item to attention there. On the Community Board level, resolution in support of this effort is also needed.

Berthet (CB 4): What can the Community Board do on this front? Are there things that can be done on the individual level? Is there a protocol?

Desmond (HCC): Complaints should first go to the 311 hotline, as usual. Make sure that it is reported as an illegal use complaint. Request this complaint to go to Mayor's Office of Special Enforcements. Housing advocates will keep on calling for stepped-up enforcement, and presentation at the Community Board is also possible.

Weithman (Goddard): Average turnover of reported complaints for illegal use is now at four to six weeks. Investigation into illegal hotels can be labor intensive.

Cole (CB 1): Can the housing advocates come to Community Board committees?

Lyle (CB 10): Can advocates provide information by Community Board? Tourists with suitcases have become common sight in CB 10 all the time.

Weithman (Goddard): The information here came from a Freedom of Information Law request; it is up-to-date as of March 2014.

Borough President Brewer: Campaign against illegal hotels needs to be mindful of its impact on genuine bed-and-breakfasts. For example, Brownstone Community in Harlem has been saying lately that Dept. of Buildings is coming after them. Pushback against this campaign is inevitable if it hit legitimate bed-and-breakfasts. I have had to warn the operators to check with relevant agencies first if the planned bed-and-breakfast is more than 100 ft. away from the intersection with a collector street.

Viest (CB 8): Is this a landlord issue or a tenant issue?

Weithman (Goddard): It is both. A large number of illegal hotels are actually under commercial operations. Such operations control a total of about a third of illegal hotels, yet they generate well above a third of the total revenues. Shockingly, a mere total of 120 Airbnb hosts generated \$60 million in revenue. It is difficult to say that those operations are not commercial.

Gruber (CB 2): How does the rise of illegal hotels lead to the end of rent regulation?

Berthet (CB 4): Landlords do not have to report uses of the unit. What is the purpose of it if the information is not going to be verified?

Weithman (Goddard): All regulated units are registered with New York State Homes and Community Renewal, the agency tasked to implement the program. The agency only has records stretching back to four years prior to the time a landlord registers the unit as regulated. It essentially means that the landlord can keep the unit off the record of regulated units for four years and move to ask for the unit to go market rate. There will then be no record to assert that the unit was ever regulated. The real issue on the illegal hotel side, however, is the rule on minimum tenancy of 30 days.

Desmond (HCC): Reporting of incidence of illegal hotels is dependent on tenants or other building occupants to report themselves. Homes and Community Renewal does not have any inspection capacity or any information that is not self-reported.

Deputy General Counsel Bartlett: There is no law against holding the unit vacant. It is foreseeable that the whole Airbnb issue may see tenants sued or evicted for illegal commercial use of their residential units.

Borough President Brewer: It helps that Attorney General Schneiderman reported on the issue. This office will help by getting the figures, coordinate with presenters and Community Boards and have relevant officials presenting it to the community.

WHEREAS, New York City suffers from a shortage of affordable housing and is in a legislatively imposed housing emergency; and

WHEREAS, Manhattan community boards have always considered the preservation and development of affordable housing a top priority; and

WHEREAS, illegal hotels are apartment and Single Room Occupancy (SRO) units in permanent residential buildings legally required to be occupied for thirty days or longer that are used as transient hotels; and

WHEREAS, short-term illegal hotel use has plagued the _____ for over a decade; and [EACH CB CAN TAILOR THIS TO THEIR INDIVIDUAL AREAS, E.G. CB3 IN MANHATTAN CAN NOTE THAT LES/CHINATOWN WAS FOUND TO BE ONE OF THE THREE MAJOR AREAS AFFECTED BY AIRBNB RENTALS AS FOUND IN AG'S REPORT]

WHEREAS, illegal hotels take available apartments from an already tight housing market, and disrupt the lives of the residents who live in the building and the community; and

WHEREAS, illegal hotels leads to the rapid deregulation of permanent affordable housing in our community, provides incentives for landlords to harass tenants out of their homes, and drives up rents in the surrounding area; and

WHEREAS, co-op shareholders and condo owners who rent their units for short-term use contrary to their proprietary lease and by-laws also risk legal action; and

WHEREAS, illegal hotels create fire safety and security risks for residents and unsuspecting tourists because they do not conform to the more stringent safety regulations for hotels set forth in the New York City Fire Codes, such as fire sprinklers and secondary egress; and

WHEREAS, illegal hotels create public nuisances and quality of life issues for residents living in the buildings, including noise, overcrowding, unusual wear and tear on the building,

WHEREAS, most illegal hotels fail to meet Federal, State and City accessibility requirements for people with disabilities; and

WHEREAS, many tourists are deceived into booking an illegal hotel because they are unaware that the buildings in which they are staying are built for permanent residential use and do not meet the stringent commercial hotel fire-safety codes; and

WHEREAS, illegal hotels change the fabric of our communities, including the loss of small business owners who rely on permanent residents living in the community are priced out; and

WHEREAS, with the advent and proliferation of online platforms including, but not limited to, Airbnb, VRBO, One Fine Stay, and Home Away over the past few years has exponentially increased illegal hotels in New York City and our community further exacerbating the housing crisis; and

WHEREAS, the New York State Attorney General Eric Schneidermann's report dated October X, 2014 on its investigation into Airbnb stated that 72% of Airbnb rentals are illegal and that the number of unique units booked for private short-term rental on Airbnb rose from 2,652 in 2010 to 16,483 in the first five months of 2014; and

WHEREAS, the Attorney General also reported that Airbnb has 13,000 listings in Manhattan alone; and

WHEREAS, Manhattan has a total of 750,000 co-op, condo and rental units; and

WHEREAS, based on these facts, Airbnb utilizes 1.74% of Manhattan's available housing stock for short-term illegal rentals, which is greater than Manhattan's vacancy rate of 1.54%, and

WHEREAS, the Attorney General also reports that commercial uses dominate the short term rental business, with 6% of the "hosts" collecting 37% of the revenue; and

WHEREAS, enforcement of illegal hotel activity is carried out by the Mayor's Office of Special Enforcement, which operates a joint task force comprised of specially trained inspectors from New York City agencies, including Department of Buildings, Department of Finance, Police Department, Fire Department, and Department of Health; and

WHEREAS, a shortage of inspectors who respond to illegal short term use complaints contributes to a delay of more than one month between a complaint being filed and an inspection being conducted; and

THEREFORE, BE IT FURTHER RESOLVED that the New York City Council and Mayor de Blasio allocate increased funding to the Mayor's Office of Special Enforcement to increase their ability to enforce illegal hotels.