



## NEW YORK STATE LEGISLATURE

### **Illegal Hotels: Bad for Affordable Housing, Residents, and Tourists**

Testimony by  
State Senator Liz Krueger and Assembly Member Richard N. Gottfried  
Before the New York City Council Housing and Buildings Committee  
On Intro. 826  
October 30, 2015

This is testimony of State Senator Liz Krueger and Assembly Member Richard N. Gottfried who represent districts that include Chelsea, Hell's Kitchen, Midtown, the Upper East Side, part of the Upper West Side of Manhattan.

We thank Chairman Jumaane Williams, the members of the Housing and Buildings Committee, and the City Council for your ongoing work to combat the proliferation of illegal hotels in New York City. We regret that due to scheduling conflicts we are unable to testify in person.

We have been working for more than a decade to understand and address the exponential growth of residential apartments being illegally used as short-term transient units for visitors, commonly referred to as "illegal hotels." After years of collaboration with a large task force of elected officials, neighborhood organizations, housing advocates, and city agencies, we passed legislation in 2010 clarifying ambiguities in city and state laws that made it difficult for city enforcement agencies to take action against illegal hotels. Following the enactment of the state law, we continued working closely with the task force to support the subsequent introduction and passage in 2012 of Local Law 45, sponsored by then-Councilmember Gale Brewer, to classify illegal hotel violations as "immediately hazardous" and increase the fines the city can impose.

The short-term rental of even a single residential unit in a multiple dwelling for part of the year can have extremely detrimental impacts on all the residents in the building. Even in cases where an apartment has a full-time resident who is only occasionally renting his or her apartment for less than 30 days at a time, the fact remains that unvetted, unsupervised strangers wandering the halls of a residential building create major safety and security concerns, as well as nuisances, for the residents who actually live there. We constantly hear from constituents whose quality of life and sense of safety have been undermined by illegal hotel activity occurring in as few as only one or two apartments in their buildings. When tenants and apartment owners decide to rent their apartments to tourists, they do so at the expense of all of their neighbors who have to live with the consequences and never had a chance to sign off on the deal in the first place.

The 2010 Home Protection Law, which we sponsored in the NYS Legislature, clarified the long-established principle in the Multiple Dwelling Law that "Class A" multiple dwellings are to be occupied as permanent housing, not for transient use. It did not make it unlawful for tenants to rent a room while they are present in their apartment, or sublet for thirty days (although a tenant's lease may restrict that). Similarly, the owner of a building may use it as a

“B & B” by converting it to a Class B multiple dwelling if the zoning and Certificate of Occupancy allows that. One and two family homes are not “multiple dwellings” and are therefore also not affected by the 2010 law.

Unfortunately, some landlords, tenants, and coop and condo owners are violating these laws. There are landlords who use illegal hotel rentals to get around the rent laws and make money beyond what the rent laws allow. Some use it to harass the tenants in their building, or to keep apartments off the rental market but still make money from them (for example, when they are trying to vacate a building or convert it to coop or condo). These owners should be penalized financially to discourage this activity.

There are also tenants who think that it is acceptable to violate the law and their leases and make a profit by renting out their landlord’s property. Co-op and condo owners who engage in this activity are also violating the law and either their lease or building by-laws. They are making money, but they are subjecting their neighbors to being harassed and inconvenienced by strangers coming and going at all hours and treating the building as if it were a tourist hotel, and dangerous conditions result from improper fire code and security protections. Profiting by renting out someone else’s property and making life miserable for your neighbors is not what we call a “sharing” economy.

Some online companies that facilitate illegal hotel activity are attempting to create a false distinction between “bad” illegal hotel operators and “hosts” who participate in the “new sharing economy”. Since the enactment of the state and city illegal hotel legislation, much of the illegal activity has shifted from being organized by a relatively small number of local operators, frequently unscrupulous building owners or managers, to large online companies such as Airbnb, FlipKey, and OneFineStay that act as both marketplace and middleman for hundreds of thousands of short-term apartments around the world. These online businesses have become highly profitable by ignoring state and local laws and ignoring the damage their business model does to communities. Although illegal hotel activity now takes place in a wide variety of forms in New York City, the fundamental impacts it has on housing, safety, and communities are the same.

Visitors to New York are also the victims of illegal hotel operations. They arrive and find they have paid good money for overcrowded, dirty, or unsafe accommodations with no services.

For these reasons, we support Intro. 826-2015. Increasing the civil penalties for violating the illegal hotel laws is a very effective way to discourage profiteering by those who illegally rent out residential apartments. The threat of a \$50,000 fine that escalates at \$2,000 per day dramatically changes the economic reality for illegal hotel operators, and ensures that fines are not simply written off as the cost of doing business. The threat of such significant fines would finally provide real leverage to the City’s enforcement agencies and also serve as a deterrent to those currently considering entering the illegal hotel industry. When we passed the illegal hotel law, part of our purpose was to make clear what activities were legal and illegal, so the City Council could be confident in raising the penalties for violating the law.

It is important to acknowledge that many property owners strongly oppose the illegal hotel activities of their tenants and are as upset about it as the neighbors of these tenants are. They understandably object to a tenant making a profit from their property. When other residents in the building complain, they complain to the landlord. Moreover, if the city issues a violation, the landlord must pay the fine for the tenant's misbehavior.

It would be appropriate for the Council to consider establishing a process for the Mayor's Office of Special Enforcement and the Environmental Control Board to determine whether the tenant or coop-condo owner is the truly responsible party and apply the penalty to that party. In some cases, it might be appropriate to apportion responsibility between the landlord and occupant, because sometimes both are responsible. This may be a novel idea in housing violation law, but would be another option to discourage the practice of illegal hotel rentals.

We urge the Council to protect the right of New Yorkers to the quiet enjoyment of their homes; to protect New York's visitors from illegal hotels of unknowable quality and safety; and to protect our scarce housing stock from being diverted to transient use. New York City's enforcement agencies need the tools provided by Intro 826 in order to effectively crack down on illegal hotel operations that are endangering public safety, taking desperately needed affordable apartments away from residents, and reducing tax revenue. We strongly urge the City Council to enact Intro 826 as quickly as possible.

Thank you for this opportunity to testify today.

*Assembly Member Gottfried and Senator Krueger sponsored Chapter 225 of the Laws of 2010, known as the "Home Protection Law" or "Illegal Hotels Law," which made technical changes to the state Multiple Dwelling Law to allow New York City to enforce against the illegal conversion of units in residential multiple dwelling for short-term transient rentals.*