

## Sanctuary Hotels in The Time of Crisis: The Legal Consequences

By [Lauren Stewart](#), Associate, Sheppard, Mullin, Richter & Hampton | December 04, 2022



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The onset of the Covid-19 pandemic and the government-ordered shutdowns and work from home orders that followed took a quick and devastating toll on the hotel industry.

Revenues went nearly to zero overnight and occupancy rates fell off a cliff.

In short, the hospitality industry was in a tailspin.

At the same time, governments and public health and hospital systems were in desperate need of sufficient bed capacity to house isolating covid patients, non-covid patients who needed to convalesce outside of a hospital, first responders, traveling

healthcare workers, and the homeless.

The solution? An unlikely marriage of these two crises. The pandemic emptied hotels, but the need for bed capacity to help fight the virus could potentially fill the hotels that were ready to respond to a call for action. The larger cities and public health systems became early adopters of this approach.

This article will explore some of the unique legal issues that arose in the initial contracting for these arrangements, as well those that arose in the aftermath from the standpoint of hotel owners and operators.

### Structuring the Agreement

The basic structure was an agreement (sometimes in the form of a modified booking agreement, other times a bespoke agreement) whereby a city, hospital, or public health department (the "user") would contract for all or most of a hotel's available rooms for a fixed rate and for a specified term, which could be extended, within negotiated parameters, by the user.

There were many considerations that the parties had to contemplate when negotiating these agreements:

- What population would be served by this arrangement? Should hotel rooms go to infected patients only, or to first responders and medical personnel who were exposed but not infected? Mixing these populations would pose complications for the user (e.g., potentially exposing the very people they were trying to protect), so it was essential to decide what role the hotel would play.
- If the hotel were to operate as a sanctuary to infected, isolating people, should the hotel be restricted to that population? Reserving the hotel in its entirety for that group seemed the safest bet in order to limit further spread of the virus these populations sought to avoid.
- Who should care for sick guests, if the population in the hotel were infected with Covid-19? Hotel staff were not qualified to care for sick patients, and any interaction between hotel staff and guests, whether actively infected or just potentially exposed, would expose the staff to infection. The user had to consider whether trained health professionals would be in the hotel to attend to any and all medical needs of the infected guests.
- How would the hotel approach sanitization? Rooms would need cleaning, although daily room cleaning would have to be suspended in order to minimize exposure between the housekeeping staff and the guests. Laundry and housekeeping services would need to change from pre-pandemic norms no matter which selected population would stay in rooms. Even common area sanitization required increased upkeep standards, and hotel amenities such as pools, workout rooms, and office services were likely to be closed.
- How would meals be handled, if at all? A hotel without an in-house restaurant ran the risk of incoming food services from unknown sources, at a time when we did not know whether the virus was transmitted on surfaces or was airborne. At the same time, many hotel rooms did not include full kitchenettes, so with the expectation that hotel guests would remain in their rooms to comply with isolation orders, some risk with respect to food delivery was unavoidable.

In the case of a hotel that employed a unionized workforce, would the unions agree to go along with this arrangement? The top priority for hotel worker unions is the safety of their members, but on the other hand, these arrangements could avoid or minimize the necessity

for some layoffs or furloughs. The hotel had to ensure their staff's safety if they offered their hotel as a sanctuary for infected, isolated guests, and the unions had to decide whether accepting some risk of infection for their members was better than the near certainty of layoffs, furloughs, or severely reduced hours. And assuming the unions were on board with the arrangement, what kind of adjustments to the union's work rules would need to be made, and how would that be determined?

How long should the term be? Although there was no end in sight of the shutdown, the parties had to be optimistic that it would one day come to an end. If the hotel and user entered into an agreement, both parties had to consider whether the user should have the ability to extend in case the pandemic lasted longer than expected. As we all know now, the pandemic would not end, but society's understanding of living with it would adjust over time. Once vaccines were readily available, the need for hotel sanctuaries decreased.

If the user and hotel were able to come to an agreement, how would the user pay? Was the standard, pre-pandemic room rate appropriate, or would the parties negotiate for a reduced rate? Would the user pay in advance, or would they choose to pay in arrears? Either way, however the user paid, the hotel owner would need to make sure that the payments covered as much of their debt service and operating costs as possible.

How would the hotel's insurer react to the change in use of the hotel, particularly if any medical care was being provided at the hotels? The hotel owner had to think about whether its insurance would cover this activity. The user and hotel owner needed to agree on who would take on claims of exposure. From the hotel owner's perspective, it would be of paramount importance for the hotel owner to be insulated from any liability relating to medical care. If required by its insurance, the hotel may have been required to provide separate insurance certificates to cover this new activity.

Even after exploring the considerations above, many users and hotels chose to proceed and offer rooms to people in need. People now had a place to isolate and try to reduce the potential spread of Covid-19, but there would be little oversight and limited resources available to confront the multi-faceted and complex realities that accompany any large group of displaced people. For hotels that were offered as sanctuary to homeless populations, the parties would have to address the consequences of housing a group of which many members grapple with their mental health without access to appropriate care or a free space to access treatment. Perhaps both hotels and users acknowledged this reality, but understood the immediacy to find a safe space for those who needed it most. The message was obvious to both parties: keep people safe now to the extent we can, and deal with the consequences later.



Man in protective suit disinfecting the Hotel room.

## The Consequences

Later has now arrived. Users are surrendering hotels back to their owners and operators, many of whom are now confronted with the

return of properties in significantly worse shape than when they entered into agreements with the user(s). For nearly all of the hotels in this situation, they are unable to turn around the rooms vacated by their guests and immediately offer them to regular hotel guests upon the expiration of the agreement with the user. Many hotels have water damage that permeates multiple floors with potential accompanying mold issues. Walls and carpets have burns, furniture and fixtures are damaged beyond normal wear and tear, and many rooms have smoke damage. In some situations, in the event of mold or smoke damage, it would be illegal for a hotel to immediately offer up their rooms since cities have laws prohibiting smoke damage and mold in hotel accommodations.

Once the term of the agreement was ended, and the hotel was surrendered to its owner, the most pressing problem for the owner, who now did not have the revenue stream from the user to cover its taxes and debt service, was how to get the hotel back in service for business and leisure travelers as quickly as possible. Hotel owners again face a multitude of questions and considerations as they assess the state of their business.

What happens if the agreement provided for a maximum contract amount, and that amount had been reached by the time the term of the agreement expired, but the contract nonetheless provided that the user was responsible for damages caused by its guests? The hotel owner does not likely have the funds to, or believe like it should have to, pay out of pocket for extensive repairs, but where the end user was a local government, the funding authorization for the agreement may have lapsed or been exceeded, so there may be additional hurdles preventing the user from paying for the damages. Resolving that issue would be of key importance in getting the hotel back in service quickly.

What damages would the user be responsible for? Some of the agreements may have already clearly addressed this, but the parties may need further negotiations to determine the scope of the user's responsibility based on the contract language. Perhaps the user could get away with paying for only physical damage, or, perhaps the user would be on the hook to pay for physical damage as well as lost revenues during the period the hotel owner will have to keep the hotel out of service to make its repairs.

How would the cost of physical damages be determined? Who would be best qualified to make such an assessment? Can the user and hotel owners come to an agreement via negotiations, or would the parties rely on one or more experts? To what extent would different categories of damages be included, and how specific would the parties have to be in assigning responsibility? Would the user be responsible for just fixing surface level issues in the rooms and common areas, or also damages to mechanical systems from misuse?

Would the fact that the hotel might have been due for a periodic refresh reduce the amount of the user's responsibility for damages? Many hotels go through refresh cycles depending on the standard in their local markets, requirements under franchise agreements, or covenants with their lenders. If the hotel was already in the middle of its refresh cycle before the pandemic, would the user have to pay to make the hotel like-new or simply back to where the hotel was before?

Would the user be responsible for lost revenues? If so, for what time frame would the user be responsible for covering the hotel's lost revenues? Would the user be responsible for lost revenues for all hotel rooms during that time, or just a portion depending on how many rooms could physically not be placed immediately into service? How would the average daily rate and occupancy rates be determined to arrive at the lost revenue amount, and would they be fixed over the term of the user's responsibility or would they vary periodically?

## **Reflections**

Looking back, few will debate whether the users and hotel owners and operators did the right thing by acting to quickly find safe areas to isolate its at-risk populations. These parties were working off an ever-changing understanding of the Covid-19 virus and its ability to spread. The world was faced with a series of unknowns, and cities had to act to protect the people they served. Many cities across the United States face similar consequences discussed above to their rapid-fire emergency actions, and must now confront the cost of these actions. But what would the cost have been to sit idly by and do nothing?

Time will tell how local governments and hotels may navigate reallocating funds to pay for the damage to what were once considered sanctuary hotels. Local residents may be upset at the total costs of these programs if cities end up bearing the brunt of the cost.

As we all look back at how we approached solving problems in the midst of a global crisis, perhaps we will see that there were other ways we could have handled such problems without significant costs on the back end. Despite the costs, the fact remains: people in need were served, and hotel owners and operators were able to stay afloat when they otherwise may have lost their hotels and their livelihoods.

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**[Extended Biography](#)**

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