



Challenges and Opportunities for Hotel-to-Housing Conversions in New York City

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CHALLENGES AND OPPORTUNITIES FOR HOTEL-TO-HOUSING CONVERSIONS IN NYC

*By Noah Kazis**

I. Introduction

As the country continues to grapple with the COVID-19 crisis and its aftermath, policymakers in New York City and Albany have debated whether and how to support the conversion of hotels into housing—and especially affordable housing—as part of a solution to the city’s ongoing housing crisis.¹ The basic intuition is compelling. COVID has forced the shuttering of many commercial establishments, especially in hard-hit New York City. In certain sectors, the effect has been particularly large: these include hotels devastated by shutdowns in tourism, international travel, and business travel. At the same time as these spaces are sitting empty, though, Americans have faced unprecedented challenges in paying their rent—on top of preexisting rent burdens that had been driving housing instability and homelessness well before COVID. It is logical to want to use these spaces—these important physical assets—rather than let them remain unoccupied, and housing is an attractive use.

However, not all hotels are ripe for conversion to housing, and the scope of the opportunity presented by hotel conversions is not clear. Some hotels—because of their business model, location, or design—are better candidates for conversion than others, and for conversion to different types of housing. In one case, only minimal and economical renovations might be required; in another, expensive gut rehabilitation would be necessary to turn the hotel into a residential use. To better understand what opportunities for hotel conversion exist in New York City, we examined the legal regime governing hotel conversions to identify the most important regulatory barriers to such adaptive uses. In upcoming work, we will also perform additional analysis examining how the hotel market is segmented—how many hotel rooms, of what kind, are located where—in order to further understand how different conversion strategies might play out spatially.

II. Background

A. Background on the New York City Hotel Industry

New York City’s hotel industry was, prior to COVID, large and economically important. As of January 2020, New York City had more than 700 hotels and more than 127,000 hotel

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¹ See, e.g., OFF. OF THE PRESIDENT, BOROUGH OF MANHATTAN, REPORT FROM THE SUSTAINABLE AFFORDABLE HOUSING DEVELOPMENT TASKFORCE (2021), <https://www.manhattanbp.nyc.gov/wp-content/uploads/2021/03/Sustainable-Affording-Housing-Development-TF.pdf>

rooms, according to an analysis commissioned by the Department of City Planning.² This total does not include short-term rentals like Airbnb or quasi-residential uses like certain SRO hotels or corporate apartments. Around 28 million people a year stayed in these hotel rooms, contributing significantly to the city’s economy.³

The city’s hotel stock was also growing extremely rapidly. From 2007 to 2019, there was a 73 percent increase in the number of hotel rooms in New York City, as over 54,000 rooms were added.⁴ Until 2018, an important segment of hotel development was taking place in light manufacturing districts: 36 percent of new hotels opened outside Manhattan were in these M1 districts.⁵ This was a notable trend for New York City, where historically hotel development was even more heavily concentrated in Manhattan. However, in 2018 the city adopted a new zoning provision requiring a special permit for hotel development in M1 districts; no application for a special permit has yet been filed.⁶ Despite this rapid growth, which some considered to be “overbuilding” relative to demand for hotels, the industry remained strong, with the highest hotel occupancy rates of any market in the country (although in 2019, hotel revenue per available room, a common indicator of hotel performance, declined).⁷ The expansion of the hotel industry in New York City also means that most hotels are relatively new. Before COVID, the average age of a hotel was 28 years, while the median age was 12 years.⁸ This growth was expected to continue before the pandemic. Another 30,000 rooms were in the development pipeline, having at least filed an application for construction.⁹

Manhattan was, and remains, the core of the hotel industry. Pre-COVID, over 81 percent of hotel rooms were located in Manhattan (and 94 percent of those rooms were located below 59th Street).¹⁰ Within Manhattan, hotels built after 2009 had an average of 204 rooms, while hotels built earlier were somewhat larger, with an average of 242 rooms. Manhattan’s hotels are also disproportionately unionized. The Hotel Trades Council represents around 75 percent of hotel workers in New York City.¹¹ Their website lists 180 unionized hotels in Manhattan, three in Brooklyn, four in Queens, and none in the Bronx or Staten Island.¹²

The COVID crisis devastated the hotel industry, as both tourism and business travel evaporated. Whereas room occupancy rates before the pandemic were above 85 percent, in the summer of 2020, they were down to 30 percent—and two-thirds of that occupancy came from government contracts to house homeless individuals and healthcare workers.¹³ By September 2020, around 20 percent of city hotels, and 31 percent of hotel rooms, were closed.¹⁴ Manhattan hotels were by far the hardest hit, with over 96 percent of room closures located in the borough.¹⁵

² N.Y.C. DEP’T OF CITY PLAN., NYC HOTEL MARKET ANALYSIS 28 (2020).

³ *Id.* at 1.

⁴ *Id.* at 1.

⁵ *Id.* at 23.

⁶ *Id.* at 24.

⁷ *Id.* at 6, 22. Reasons cited for the decline include increased supply of hotels, increased labor costs, and high commission fees from online booking sites.

⁸ *Id.* at 32.

⁹ *Id.* at 83.

¹⁰ *Id.* at 30, 40.

¹¹ Hotel Trades Council, *Affiliated Locals*, <https://hotelworkers.org/about/affiliated-locals> (last visited June 1, 2021).

¹² Hotel Trades Council, *Find Union Hotels*, <https://hotelworkers.org/#find-union-hotels> (last visited June 1, 2021).

¹³ N.Y.C. DEP’T OF CITY PLAN., *supra* note 1 at 2.

¹⁴ *Id.* at 28.

¹⁵ *Id.* at 28.

Luxury hotels were also disproportionately likely to close.¹⁶ Only a small fraction of these closures are, for now, officially permanent; the majority of hotel closures are currently considered “temporary,” though the line between these categories remains fluid.¹⁷ Some hotels may be operating, but still in financial distress.

As the analysis below makes clear, it is important to segment these data further—by geography, hotel type, age, zoning district, and more—in order to understand the options for conversion. Upcoming Furman Center analysis will allow for more of this kind of segmentation.

B. Background on Hotel-to-Housing Conversions

While there is interest in using all types of commercial space as housing in the wake of COVID-19, hotels seem especially promising as candidates for residential conversions. Hotels already provide something akin to residential space: they are designed to provide people shelter. Accordingly, they are designed more like apartments than are many office buildings: for example, hotel rooms generally each have windows, while the interior spaces of an office building do not. Historically, hotels were an essential part of American cities’ housing stock, with no sharp line dividing short-term and long-term lodgings;¹⁸ it is hardly unimaginable that they could serve this function again today.¹⁹

The immense financial distress in the hotel industry has further made conversions appear to be a promising, perhaps once-in-a-generation, opportunity to cheaply acquire sites for affordable housing development. As noted above, around one in five hotels and one in three hotel rooms closed during the pandemic.²⁰ And as of April 2021, New York City hotels had \$1.8 billion in unpaid balances on their mortgages.²¹ Outright defaults have been less common than many expected,²² but financial distress has already driven some foreclosures.²³ In one recent deal, investors paid \$175 million for the Watson, a 600-room Midtown hotel, with the intent of converting half the property into market-rate apartments (and leaving the other half a hotel).²⁴ As the market considers converting hotels into market-rate housing in individual cases, many see an opportunity for more broadly encouraging conversions, including for affordable housing.

There is much truth in this basic story. Indeed, hotels have *already* provided a critical housing asset for New York City throughout the pandemic. Early in 2020, it became clear that the city’s crowded homeless shelters—especially congregate shelters without separate rooms for residents—presented a significant risk of spreading the COVID-19 virus. Accordingly, the city turned to its largely-empty hotels to provide rooms for homeless individuals. Estimates from the summer of 2020 indicated that 20 percent of city hotels were being used for homeless housing.²⁵

¹⁶ *Id.* at 30.

¹⁷ *Id.* at 35-36.

¹⁸ See generally PAUL GROTH, *LIVING DOWNTOWN* (1999).

¹⁹ See also N.Y.C. ZONING RESOL. § 12-10 (defining “apartment hotel” as a type of multiple dwelling).

²⁰ N.Y.C. DEP’T OF CITY PLAN., *supra* note 1 at 28.

²¹ C.J. Hughes, *What Will Happen to All the Empty Office Buildings and Hotels?*, N.Y. TIMES (Apr. 16, 2021), <https://www.nytimes.com/2021/04/16/realestate/empty-office-buildings-hotels.html>

²² *Manhattan Hotel Trades in Biggest Distressed Lodging Deal of Pandemic*, THE REAL DEAL (Apr. 7, 2021) <https://therealdeal.com/2021/04/07/manhattan-hotel-trades-in-biggest-distressed-lodging-deal-of-pandemic/>

²³ Hughes, *supra* note 19.

²⁴ *Id.*

²⁵ Courtney Gross, *Close to 20 Percent of NYC Hotels are Housing the Homeless*, N.Y. 1 (June 25, 2020), <https://www.ny1.com/nyc/all-boroughs/homelessness/2020/06/25/close-to-20-percent-of-nyc-hotels-are-housing-the-homeless>

Another set of hotel rooms—especially during New York’s first wave of COVID—were used to house volunteer medical workers who came to work in the city’s hospitals. And the City has also used hotel rooms to allow individuals who have tested positive for COVID-19 to safely “self-isolate,” helping to limit contagion (crowded households have proven a particularly important risk factor for the spread of COVID).²⁶ As noted above, during the summer of 2020, a full two-thirds of hotels’ limited occupancy came from these government contracts.²⁷ These experiences clearly demonstrated the value of using the city’s hotels as a resource during COVID: rather than sitting empty, these rooms were used to provide housing and protect public health.

Converting hotels into housing is also nothing new: this was a regular feature of New York City’s real estate market pre-COVID. As of 2017, New York City was—for better and for worse—housing roughly 7,800 people facing homelessness in commercial hotels.²⁸ Additional efforts were underway, where opportunities arose, to convert former hotels into shelters.²⁹ The high end of the market, too, saw regular action around hotel conversions. From 2004 to 2015, 3,600 rooms at 14 hotels were converted into high-end apartments and condominiums, including, most famously, at the Plaza Hotel.³⁰ In response, and as an effort to protect hotel workers’ jobs, the City Council enacted a moratorium on hotel conversions, prohibiting hotels larger than 150 rooms from converting more than 20 percent of their rooms to other uses.³¹ This moratorium, after being extended once, expired in 2019, allowing conversions to resume. Perhaps the most notable project in the works was less a conversion of an existing structure than a massive new project: the proposed redevelopment of the Grand Hyatt Hotel next to Grand Central into the city’s second-tallest skyscraper, a project which will reduce the number of hotel rooms on site from around 1,300 to around 500.³² Though only somewhat analogous to the conversions at issue in this brief, the project underscores the preexisting market interest, pre-COVID, for repurposing some hotels to non-hotel uses.

C. Assessing Opportunities for Hotel Conversions

The city’s hotel stock is not homogenous, and converting a hotel into housing is not necessarily simple. The city’s hotels are different sizes and ages, cater to different types of visitors, and are located in different neighborhoods and zoning districts. Hotel ownership and

²⁶ *Covid-19 Hotel Program*, N.Y.C. <https://www1.nyc.gov/site/helpnownyc/get-help/covid-19-hotel-program.page> (last visited June 1, 2021); *Covid-19 Cases in New York City, a Neighborhood-Level Analysis*, N.Y.U. FURMAN CENTER: THE STOOP (Apr. 10, 2020), <https://furmancenter.org/thestoop/entry/covid-19-cases-in-new-york-city-a-neighborhood-level-analysis>

²⁷ N.Y.C. DEP’T OF CITY PLAN., *supra* note 1 at 2.

²⁸ N.Y.C. COMPTROLLER, DHS COMMERCIAL HOTEL UPDATE (Apr. 17, 2017), <https://comptroller.nyc.gov/reports/dhs-commercial-hotel-update-11116-22817/>. New York City has a long history of housing homeless New Yorkers in hotels, recurrently turning to hotels as a way of managing insufficient or inelastic shelter capacity and recurrently turning away from them after running into difficulties with ensuring quality housing conditions, providing social services, and controlling costs when using hotels for this purpose.

²⁹ E.g. Rachel Holliday Smith, *State Agency Stalls Open of Billionaires’ Row Homeless Shelter*, THE CITY (June 14, 2019), <https://www.thecity.nyc/2019/6/14/21212181/state-agency-stalls-open-of-billionaires-row-homeless-shelter>

³⁰ Testimony of James Patchett, NYC Council Committee on Housing and Buildings, Intro 592: In Relation to the Preservation of Hotels (Apr. 1 2015).

³¹ N.Y.C. LOCAL LAW 50 (2015).

³² Dana Schulz, *New Rendering Revealed For The 1,646-Foot Tower That May Rise Next To Grand Central*, 6SQFT (May 18, 2021), <https://www.6sqft.com/som-175-park-avenue-grand-hyatt-proposal/>; N.Y.C. DEP’T OF CITY PLAN., *supra* note 1 at 27.

management models diverge as well: even within a single market segment, different hotels will exhibit different debt and equity structures and different relationships between property owners, hotel brands, and management companies. Across this diverse set of buildings and businesses, different regulatory standards apply. City, state and federal laws meant to ensure housing quality, safety, and accessibility limit which hotels can easily convert into housing and which cannot become housing without undertaking costly renovations or extensive public approval processes. Not all hotels are good candidates for conversion, and fewer still are good candidates under current law.

Our purpose in this brief is not to quantify or pinpoint precisely which sites are strong or weak candidates for conversion to housing. Each location will face its own particular zoning regulations and must accommodate its own business model, financing stack and investor demands.³³ Moreover, given the immense uncertainty about the future of tourism, different market actors likely have meaningfully different valuations of hotels, further adding to the idiosyncrasies of each site.

More fundamentally, determining what makes for a “good” conversion site involves many normative questions: Is it worth paying a premium to locate affordable housing in Midtown (or, conversely, should even market-rate housing be discouraged in Midtown to protect the area’s unique commercial agglomerations³⁴)? Should unionized hotel jobs be protected, even if some unionized hotels are particularly distressed? Should the city government—or local community boards—have a role in determining which hotels can convert? These are important questions for public debate.

Reflecting these different priorities, state lawmakers have put forward different approaches to promoting hotel conversions (the details of which are discussed below). The proposals differed as to whether and when they overrode local zoning; which hotels would be eligible to convert; and what kind of housing and affordability levels would be provided. This spring, as part of the state budget, New York lawmakers set aside \$100 million for hotel conversions—but were unable to reach an agreement on the terms of the program.³⁵ That pot of money cannot be used until the Legislature sets those terms, further increasing the importance of understanding this issue. This brief intends to help inform those debates by providing important background information about hotel conversions in New York City.

III. Land Use Regulations and Hotel Conversions

As a first step towards understanding what opportunities are provided by hotel conversions, the remainder of this brief analyzes the land use law governing such conversions. It lays out the most important rules—federal, state, and local—that currently limit conversions (either by prohibiting them outright or by requiring costly renovations), as well as the pathways for changing those rules. It concludes by looking at special considerations involving labor,

³³ For example, properties which are currently providing housing for homeless New Yorkers are very differently situated from those without such contracts.

³⁴ The East Midtown rezoning was motivated in part by the goal of protecting the area’s commercial core from residential incursions. N.Y. CITY DEP’T OF CITY PLANNING, EAST MIDTOWN REZONING, https://www1.nyc.gov/assets/planning/download/pdf/plans/east-midtown/east_midtown.pdf (last visited June 1, 2021).

³⁵ Rebecca C. Lewis, *How Will New York Convert Unused Buildings Into Housing?*, CITY & STATE N.Y. (Apr. 20, 2021), <https://www.cityandstateny.com/articles/politics/new-york-state/how-will-new-york-convert-unused-buildings-housing.html>

affordable housing, and supportive housing. In doing so, it points towards the kinds of hotel conversions that are more and less feasible under current law and towards the kinds of regulation that would have to be reconsidered to allow for more conversions.

A. Land Use Laws Limiting Hotel-to-Residential Conversions

i. Zoning and Housing Code Rules

The zoning resolution, and related state and local land use laws, limit when hotels may be converted into housing. The most basic zoning provisions at issue govern where residential uses are permitted. In general, the New York City zoning resolution divides the city's land into three primary categories of zone: residential, commercial, and manufacturing. Hotels are generally not permitted to open in residential zones, while residential uses are generally not permitted in manufacturing zones. Accordingly, the basic use zoning regulations allow a hotel in a commercial zone (or one grandfathered into a residential zone) to convert into housing, but not a hotel in a manufacturing zone. Given the increasing number of hotels located in light manufacturing zones in recent decades, this poses a significant first limitation. There are additional rules that may limit the partial conversion of only a building's lower floors from hotel to residential use.³⁶

Residential uses are also subject to zoning regulations governing their size, shape, and density which differ from the standards governing commercial uses like hotels. Where bulk regulations are less strict for commercial uses than for residential uses, many hotels will be overbuilt if they seek to convert to residential use. For example, commercial buildings must generally provide a 20-foot rear yard, while residential buildings require a 30-foot rear yard.³⁷ Hotels built to provide only that 20-foot rear yard will not comply with the residential standard, absent special circumstances. Any other zoning regulation that applies more restrictive standards to the proposed residential use than what the hotel is currently built to can pose similar problems, including limits on height or, outside Manhattan, requirements for the provision of off-street parking.³⁸ Additional rules regarding light-and-air standards, governing the placement of windows, come from state law and will limit the creation of residential units in formerly-commercial spaces.³⁹

For the largest hotels, another provision of state law may pose an obstacle to conversions. State law caps the overall size of a residential building at a floor area ratio (FAR) of 12, but does not cap commercial buildings in the same way.⁴⁰ A hotel that exceeds 12 FAR could not entirely convert to a residential building, pursuant to state law. However, buildings with a residential component can exceed 12 FAR through the inclusion of commercial spaces.

Residential properties are also subject to density regulations which, apart from limits on a building's bulk, limit how many apartments may be built within that building's envelope. These regulations take two forms: caps on the total number of apartments in a building, as a function of

³⁶ N.Y.C. ZONING RESOL. § 32-422.

³⁷ N.Y.C. ZONING RESOL. § 33-26, § 23-47. There are complicated alternative provisions for a multitude of scenarios, including through lots (§ 23-53), shallow interior lots (§ 23-52), lots in certain districts (§ 35-53), mixed-use buildings (§ 35-22, § 35-23), and more (*e.g.* §§ 23-471, 23-54).

³⁸ Compare N.Y.C. ZONING RESOL. § 25-23 (Parking requirements for residential uses) with § 36-20 (parking requirements for commercial uses).

³⁹ N.Y. MULTIPLE DWELLING LAW § 277-7.

⁴⁰ N.Y. MULTIPLE DWELLING LAW § 26-3.

the building's maximum residential floor area,⁴¹ and in some lower-density zoning districts, minimum square footage requirements for each unit.⁴² How much density regulations limit the number of apartments per building varies substantially by zoning district, and as always there are special rules and exceptions. However, given the design of hotel rooms—particularly in New York City, where rooms run small compared to national averages⁴³—the potential impact of density regulations can be substantial. A hotel with small rooms may not be able to convert those rooms to apartments without producing more total apartments than permitted; compliance with the density regulations would require combining rooms into larger apartments. There are additional regulations, located outside the zoning resolution, governing the minimum size of individual rooms in residential units, which would likely pose additional limitations on the conversion of small hotel rooms to apartments without renovations.⁴⁴

ii. Accessibility Requirements, and other Non-Zoning Limitations on Hotel-to-Residential Conversion

The zoning resolution is not the only source of regulations limiting the availability of hotel-to-residential conversions. Among the most significant come from requirements to ensure that buildings are accessible to people with disabilities. Hotels must already meet certain accessibility standards, as they are subject to the Americans with Disabilities Act (ADA). For newer buildings, the ADA requires a portion of rooms in each hotel to be handicap-accessible, with different requirements for different accessibility features.⁴⁵ However, older buildings are not subject to the ADA's stronger rules for new construction, but rather only must remove barriers to accessibility where such removal is "readily available."⁴⁶ Conversion to housing would put buildings into different accessibility regimes, with different and often stricter requirements.⁴⁷ In particular, the change of use to multi-family housing would trigger the accessibility requirements of the city's Building Code.⁴⁸ These rules govern the provision of accessible routes and entrances, as well as the number and design of accessible apartments. Additionally, projects which receive federal funding, including all HPD-funded projects,⁴⁹ would be subject to Section 504 of the federal Rehabilitation Act. Section 504 has its own set of physical accessibility requirements, including that five percent of units be accessible for people with mobility impairments and two percent of units be accessible for people with hearing or vision impairments.⁵⁰ Some hotels may, based on their ADA compliance, already be able to meet

⁴¹ N.Y.C. ZONING RESOL. § 23-22.

⁴² N.Y.C. ZONING RESOL. § 23-23.

⁴³ N.Y.C. DEP'T OF CITY PLAN., *supra* note 1 at 17 (national standard is 350 square foot minimum, but growth in NYC market has been in units around 200 square feet).

⁴⁴ N.Y.C. BLDG. CODE § 1208; N.Y.C. HOUSING MAINTENANCE CODE § 27-2074.

⁴⁵ 28 C.F.R. § 36.406(c); 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN, § 224, 806, https://www.ada.gov/2010ADASTandards_index.htm

⁴⁶ 42 U.S.C. § 12182-83.

⁴⁷ New private multi-family housing is also subject to the accessibility requirements of the Fair Housing Act, but housing converted from non-residential uses are not covered by this section of the FHA. *See* Fair Hous. Rts. Ctr. in *Se. Pennsylvania v. Post Goldtex GP, LLC*, 823 F.3d 209, 211 (3d Cir. 2016).

⁴⁸ N.Y.C. BLDG. CODE § 1101.3.1 (2016); *see also* N.Y.C. BLDG. CODE § 28-101.4.3 (buildings cannot refer back to previous building code for accessibility standards, unlike other building code provisions)

⁴⁹ N.Y.C., DEP'T OF HOUS. PREVENTION & DEV., ACCESSIBILITY GUIDE VERSION 1.1

<https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/hpd-accessibility-guide.pdf>; *see also* 24 C.F.R. § 8.2, 8.3.

⁵⁰ 24 C.F.R. § 8.22, 8.23.

these separate accessibility requirements with modest alterations. In many cases, however, compliance with accessibility requirements will require extensive renovations involving building-wide redesigns of hallways and unit layouts, as well as walls and plumbing.

These regulatory hurdles are not the only ones affecting conversions. For example, conversions may trigger new environmental obligations under the city’s energy code, which could be considerable.⁵¹ In some cases, other building code provisions will apply as well.⁵² Bringing older buildings up to current code can be expensive and potentially require gut renovations.

B. Paths to Conversion

i. As-of-Right Conversions Under Current Law

Although many hotels would not meet the basic land use law requirements for use as a residential building, there are multiple pre-existing regulatory paths to easier conversions built into the Zoning Resolution and state law. These options do not provide ways around *all* regulatory barriers (importantly, state and local law cannot waive accessibility requirements imposed by federal law). Still, for some hotels, existing law provides opportunities to convert to housing notwithstanding certain deviations from the zoning regulations normally governing residential buildings.

First, non-conforming uses—such as a hotel currently located in a zoning district where new hotels would not be allowed as a use—are permitted to convert to conforming uses without regard for the bulk and parking requirements of current zoning.⁵³ They would still be required to meet the requirements of the state Multiple Dwelling Law, however. Thus, a hotel located in a residential zone could convert to a residential use, regardless of some (but not all) of the ways its physical layout would not comply with current land use law.

Another option is available for certain older, centrally-located hotels. Under Article I, Chapter 5 of the Zoning Resolution, non-residential buildings may convert to residential use, notwithstanding the relevant bulk regulations.⁵⁴ A building which converts under this chapter instead only must satisfy much more permissive rules about light and air and open space.⁵⁵ For example, a building which converted under Article I, Chapter 5 could maintain its 20-foot rear yard. Notably, this chapter enabled the conversion of the Waldorf-Astoria hotel, among other significant projects.⁵⁶

However, three important criteria for conversion under Article I, Chapter 5 limit its applicability. First, it is only available for buildings in zones where residential use is permitted, and not in manufacturing zones.⁵⁷ Given the recent growth of hotels in M1 zones (until the

⁵¹ N.Y.C. ENERGY CONSERVATION CODE § R505-2 (“Any space that is converted to a dwelling unit or portion thereof from another use or occupancy shall comply with this code.”).

⁵² See N.Y.C. BLDG. CODE § 28-101.4.3 (providing when prior code buildings must follow current building code standards).

⁵³ N.Y.C. ZONING RESOL. § 52-31.

⁵⁴ N.Y.C. ZONING RESOL. ch. 5, art. I.

⁵⁵ N.Y. MULTIPLE DWELLING LAW § 277.

⁵⁶ Daniel Braff, *Stimulating A Post-Pandemic Recovery—Converting Offices to Residential Use In NYC*, NYREJ (Jan. 19, 2021), <https://nyrej.com/stimulating-post-pandemic-recovery-converting-offices-to-residential-use-by-daniel-braff>

⁵⁷ N.Y.C. ZONING RESOL. § 15-01 (2011).

imposition of a special permit requirement), this cuts out an important slice of hotels.⁵⁸ Second, this conversion process is available only in 12 of the city's 59 community districts: roughly Manhattan below 59th Street, along with the portions of Brooklyn and Queens closest to Manhattan.⁵⁹ This covers the lion's share of hotel rooms in the city, and an even higher share of hotels that have gone offline, though not all.⁶⁰ Third, only buildings constructed prior to 1961 (or in Lower Manhattan, prior to 1977) are eligible.⁶¹ The median age of hotel in New York City, however, is 11 years old, limiting how many hotels can take advantage of Article I, Chapter 5.⁶² That said, older hotels were more likely to close during the pandemic, and 30 percent of offline rooms, as of September 2020, were located in hotels built before 1961.⁶³ Additionally, Article I, Chapter 5 does not allow for the creation of rooming units, only dwelling units: essentially, the units created must have kitchens and bathrooms.⁶⁴ For many hotels, other than extended-stay hotels, this will require some and often substantial construction. All told, Article I, Chapter 5 represents an important path around certain zoning resolution barriers to residential conversion for some, but not all, hotels.

ii. Rezoning through ULURP

For many hotels, the combined effect of land use rules will mean that conversion would necessitate a top-to-bottom redevelopment of the entire property or that there is no way to feasibly convert to housing under the current regulations (whether as a legal matter or an economic one). For some of these hotels, though, the land use constraints are sufficiently modest, and sufficiently cabined to the zoning resolution, that a rezoning could allow a successful conversion to housing. For example, one notable hotel-to-housing conversion, located at 90 Sands Street (and discussed in more detail below), went through ULURP only because it was located in a manufacturing zone where housing is not permitted.⁶⁵

ULURP adds time, cost, and uncertainty to the real estate process. The formal ULURP process takes more than half a year, and preparing a project to move through ULURP lengthens that timeline considerably further: sometimes by months, sometimes by years. The direct cost of preparing and defending a ULURP application is estimated to cost more than \$1 million, and the

⁵⁸ According to the Department of City Planning, in 2018 13 percent of hotel rooms were in M1 districts, while 30 percent of rooms in the hotel development pipeline were located in M1 districts. N.Y.C. DEP'T OF CITY PLAN., M1 HOTEL TEXT AMENDMENT, <https://www1.nyc.gov/site/planning/plans/m1-hotel-text/m1-hotel-text.page> (last visited June 1, 2021).

⁵⁹ Specifically, it applies to Manhattan Community Districts 1, 2, 3, 4, 5, and 6, Brooklyn Community Districts 1, 2, 6, and 7, and Queens Community Districts 1 and 2. N.Y.C. ZONING RESOL. § 15-01 (2011).

⁶⁰ Prior to the pandemic, Manhattan had 81.2 percent of the city's total number of hotel rooms. N.Y.C. DEP'T OF CITY PLAN., *supra* note at 37. Of those, 6 percent of hotel rooms in Manhattan are located north of 59th Street. *Id.* at 40. Moreover, over 96 percent of hotel rooms that went offline between January and September of 2020 were located in Manhattan. *Id.* at 37.

⁶¹ N.Y.C. ZONING RESOL. § 15-01.

⁶² N.Y.C. DEP'T OF CITY PLAN., *supra* note 1 at 32.

⁶³ *Id.* at 32.

⁶⁴ N.Y.C. ZONING RESOL. § 15-111.

⁶⁵ N.Y.C. PLAN. COMM'N, REPORT C 200059 ZMK, (Feb. 19, 2021), <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/200059.pdf>

indirect costs of delay can be much greater.⁶⁶ And there is no guarantee that a ULURP application will be successful.

These costs are important considerations for any development project in New York City, but they have special bite with respect to hotel conversions. The COVID-19 crisis has caused dramatic, rapid shifts in the city’s real estate markets. Those shifts will continue to be quick and hard to predict. The future of the hotel industry, for example, looks brighter in light of a rapid domestic vaccine rollout, but it still depends on huge unknowns, like whether remote-work technology will permanently affect business travel and how international tourism will be affected by pandemic conditions abroad. Adding a year to project timelines, in the midst of unprecedented conditions, makes it even harder for property owners to bet on future conditions. Moreover, much of the impetus for redeveloping hotels is to take advantage of a short-term glut of empty hotel rooms. Projects that cannot begin for a year (and will be completed later still) are not well-suited for seizing the moment.

iii. State-Level Proposals to Expand Hotel-to-Residential Conversions

State law can waive or modify many—but not quite all—of the land use regulations governing hotel conversions. Over the last year, a number of proposals have emerged from Albany for how to approach this. A budget-season proposal from the Governor’s office would have allowed New York City hotels of fewer than 150 rooms, other than those between the Financial District and 110th Street in Manhattan, to convert to residential use notwithstanding any state or local laws to the contrary, so long as 25 percent of the new units were affordable.⁶⁷ Legislation introduced by Senate Housing Committee chair Brian Kavanagh would allow the immediate conversion of a New York City hotel to fully-affordable residential use, if the hotel is located within 800 feet of a zone that allows residential uses.⁶⁸ A third proposal, the “Housing Our Neighbors With Dignity Act,” (“HONDA”) sponsored by Deputy Senate Majority Leader Michael Gianaris, has evolved over time. Originally, HONDA would not have provided for any regulatory relief, instead focusing on appropriating state funds for the acquisition of certain distressed hotels, to be converted into affordable housing.⁶⁹ Subsequent amendments to HONDA would allow hotel conversions, notwithstanding most other state or local laws, only within 400 feet of a zone allowing residential uses, subject to local government approval, and when used for permanently affordable housing.⁷⁰ Conversions under HONDA would also be required to, among other things, set aside half of units for homeless households and provide private bathrooms and kitchen facilities.⁷¹

The details of these legislative proposals differ considerably, especially in whether the disproportionate number of hotels located in Manhattan would be included; in how many of the

⁶⁶ Kathryn Brenzel, *Developers, City Race to Get Approvals Before Regime Change*, THE REAL DEAL (Apr. 21, 2021), <https://therealdeal.com/2021/04/21/developers-city-race-to-get-approvals-before-regime-change/>

⁶⁷ S2508 Part L 2021-2022 Reg. Sess. (N.Y. 2021), as amended by <https://www.budget.ny.gov/pubs/archive/fy22/ex/30day/ted-artvii-amendments.pdf>

⁶⁸ S4937, 2021-2022 Reg. Sess. (N.Y. 2021).

⁶⁹ S5257, 2021-2022 Reg. Sess. (N.Y. 2021).

⁷⁰ S5257a, 2021-2022 Reg. Sess. (N.Y. 2021). Certain alterations to the configuration of units would still be subject to state and local law.

⁷¹ *Id.*

newly-built hotels in light manufacturing zones would be included; in whether large hotels would be included; in what kind of housing could be built; and in what affordability levels would be required. There are also important ambiguities as to the precise bounds of certain provisions of the bills, as drafted. But all share the concept that for certain specified hotel properties, and in exchange for some amount of affordable housing provision, the state would clear away state and local regulatory barriers to converting to residential use.

Importantly, though, the state cannot supersede federal law. Thus, to the extent that developers fund the affordable components of these projects through participation in federally-funded programs, they would still have to satisfy federal accessibility requirements. Given that accessibility requirements are among the most likely regulatory issues to require extensive renovations, this remains a meaningful limitation on the number of hotels that can cheaply or quickly convert to housing, even with state action.

Project Homekey

As New York debates how to convert hotels into affordable housing, it should look to California, where the state’s “Project Homekey” stands as a leading example of how such a program could work. Project Homekey evolved from the state’s “Project Roomkey.” Project Roomkey began by using hotel rooms for temporary shelter, while Project Homekey attempted to turn those hotels (as well as dormitories and other commercial buildings) into permanent housing for people who are homeless or at risk of homelessness. Since its creation in June of 2020, Project Homekey created 6,000 units of housing at a cost of \$1 billion.⁷² At a per-unit cost of roughly \$166,000, this marks a bargain compared to California’s normally-high cost of producing new affordable housing, which averaged around \$425,000 in 2016.⁷³

Project Homekey’s defining feature may be its emphasis on speed. Largely because the state was using federal COVID relief funds for the program—and those funds had to be spent before the end of 2020—Homekey was built to move quickly. The state authorized Homekey developments to skip the normal permitting and environmental review processes. Additionally, because Homekey provided sufficient funds for development directly, the normally-slow process of layering multiple funding streams could be avoided. Additionally, as part of this emphasis on speed, the state exempted Project Homekey developments from zoning entirely. Local opposition has still derailed a few projects—particularly where entire counties have resisted developments⁷⁴—but “Not In My Backyard”-style opposition has been significantly defanged. Moreover, because of this emphasis on speed, Project Homekey developments have tended to focus on properties where only minor renovations are needed, including hotels with kitchenettes. However, Homekey is not limited to such properties.

Project Homekey has widely been considered a success. In his most recent budget proposal, California Governor Gavin Newsom has proposed expanding Homekey to spend \$7 billion more.⁷⁵ However, given the different built environment and hotel stock of California, the model may not be easily translated to the New York City context.

⁷² Gary Warth, *Gov. Newsom proposes \$12 billion to house California’s homeless*, L.A. TIMES (May 11, 2021), <https://www.latimes.com/california/story/2021-05-11/california-governor-proposes-12b-to-house-states-homeless>

⁷³ Turner Center for Housing Innovation, *The Cost of Building Housing Series*, U. CAL. BERKELEY (Mar. 20, 2020), <https://turnercenter.berkeley.edu/research-and-policy/the-cost-of-building-housing-series>

⁷⁴ Will Houston, *State Officials Rebuke Marin For Ditching Homeless Project*, MERCURY NEWS (Nov. 14, 2020), <https://www.mercurynews.com/2020/11/14/state-officials-rebuke-marin-for-ditching-homeless-project/>

⁷⁵ Warth, *supra* note 85.

C. Additional Considerations

i. Labor: Contractual and Political Considerations

Hotels are a major industry in New York City, providing many jobs, including numerous unionized jobs. Moreover, hotels support both the larger tourism industry and business travel, both of which are critical to the city's core industries. In assessing any plan to convert hotels to housing, it is essential to consider the impacts on employment and economic activity driven by a decreased stock of hotel rooms in addition to the benefits created by new housing.

The unionized nature of the industry also shapes the policy considerations at play. First, as a matter of cost, the Hotel Trades Council has negotiated for its workers the right to severance pay. The contract provides that after a "permanent closing," workers are eligible for a severance payment equal to four days of wages for each year of service, along with an additional sum for benefits.⁷⁶ When a hotel is converted to residential use, however, a special provision applies, giving the workers 15 days of pay for each year of service.⁷⁷ This operates as a distinct disincentive for residential conversions, relative to other responses to fiscal distress at unionized hotels.

Second, New York City is considering zoning changes which would require all construction of new hotels to require a special permit⁷⁸ (this proposal is widely considered to be a top priority of the hotel union⁷⁹). A special permit requirement would require hotel developments to be approved by the City Council, adding years to the development timeline, substantial costs, and a discretionary political decision to the approval process. If enacted, a special permit requirement might significantly reduce hotel construction. The city has already created special permit requirements for hotels in certain neighborhoods and in manufacturing zones, yet to date no one has applied for a special permit anywhere where it is required.⁸⁰

As a result, if the hotels special permit moves forward and new hotels become more difficult to create, this would reduce interest in converting hotels to residential: existing hotels would be a scarcer, more valuable asset. Notably, a Department of City Planning analysis concluded that even if all hotels temporarily closed due to COVID reopened, Manhattan will be more than 30,000 hotel rooms short of demand by 2035.⁸¹ While predicting the future is always a fraught exercise, this analysis indicates that hotels will, in the medium-term, remain in high demand—and all the more so if opening new hotels becomes more difficult.

The special permit experience (along with the earlier moratorium on hotel conversions) also suggests that the City Council strongly supports retaining unionized hotel jobs. Accordingly,

⁷⁶ INDUSTRY-WIDE AGREEMENT BETWEEN NEW YORK HOTEL AND MOTEL TRADES COUNCIL, AFL-CIO & HOTEL ASSOCIATION OF NEW YORK CITY, § 52 (eff. Jul. 1, 2012).

⁷⁷ *Id.* § 57.

⁷⁸ N.Y.C. DEP'T OF CITY PLAN., CITYWIDE HOTELS TEXT AMEND., <https://www1.nyc.gov/site/planning/plans/citywide-hotel/citywide-hotel-overview.page> (last visited June 1, 2021).

⁷⁹ J. David Goodman, *This Union Defeated Airbnb. Now It's Taking Aim at a New Target*, N.Y. TIMES (Jan. 2, 2020), <https://www.nytimes.com/2020/01/02/nyregion/hotel-union-nyc-airbnb.html>; Rebecca Baird-Remba, *Controversial NYC Hotel Amendment Gets its First Public Hearing*, COMMERCIAL OBSERVER (Jan. 25, 2021), <https://commercialobserver.com/2021/01/nyc-hotel-amendment-de-blasio-union/>

⁸⁰ N.Y.C. DEP'T OF CITY PLAN., *supra* note 1 at 24; Rebecca Baird-Remba, *A Proposed Permit for Hotel Construction Could Croak NYC's Hospitality Recovery*, COMMERCIAL OBSERVER (Apr. 5, 2021), <https://commercialobserver.com/2021/04/a-proposed-permit-for-hotel-construction-could-croak-nycs-hospitality-recovery/>

⁸¹ N.Y.C. DEP'T OF CITY PLAN., *supra* note 1 at 83.

any conversion of a unionized hotel which requires ULURP approval is likely to be closely scrutinized. It seems unlikely that such approvals would be granted without meaningful (and potentially costly) protections for workers.

Overall, the importance of hotels to the city economy should raise concerns about the long-term economic impact of converting hotels to residential use, especially if those hotel rooms cannot easily be regained later. Conversions of unionized hotels will face additional financial and political hurdles.

ii. Affordable Housing

So far, this brief has discussed the pathways to converting hotels to housing, as a general matter. But there are additional factors to consider in assessing the potential of hotel conversions as a source of below-market-rent housing.

Converting hotels into mixed-income or fully affordable housing will almost always require some form of public subsidy, whether that be interest free or forgivable loans, property tax exemptions, ongoing tenant-based assistance, or some other type of financial assistance. The price of acquiring hotel properties has not dropped so low that it would allow for unsubsidized affordable housing development, and is not likely to do so. This is to be expected: even if hotel rooms are currently sitting empty, the acquisition price will reflect all competing uses for the property—including a return to hotel operation as tourism recovers and market-rate residential uses—not only current revenues. The prospect of contracts with or sale to the public sector may help keep prices elevated as well. Given the imminent recovery of the hotel industry, these alternative uses will remain competitive even if conversions to affordable housing are given regulatory advantages, whether through state law or through the application of political discretion during ULURP. Achieving unsubsidized development would likely require the conversion process to generate additional sources of revenue (such as significant market-rate residential rents) even while the value of the hotel remained extremely low.

Since subsidies will still be required, hotel conversions to affordable housing will also need to outcompete other potential uses of housing subsidy, whether new construction or preservation. Converting hotels—which will often require costly interior renovations—may not be more cost-effective than subsidizing buildings that are already residential or are designed to be housing from the ground up. Focusing on hotel conversions does not avoid the difficult questions of affordable housing development, like how to prioritize affordability at different income levels and in different locations. And to the extent that New York hopes to convert hotels into deeply affordable housing—including housing targeted at formerly homeless households—the project may require not only upfront spending, but also long-term subsidies, requiring another set of trade-offs about how best to deploy funds.

This is especially true given the location of existing hotels. Many hotel developers have paid a premium to be in Midtown and other central Manhattan locations, to take advantage of proximity to business and tourist destinations. Some affordable housing developers may value those locations within the CBD less. In deciding how to allocate housing subsidies, the city and state will have to decide whether bringing more affordable housing into neighborhoods like Midtown is worthwhile: do the benefits (whether benefits to tenants, like improved transit access, or to developers in the form of potentially discounted hotel acquisitions) outweigh the locational costs? Is this an opportunity to bring affordable housing into neighborhoods that have

little of it, or a weakening of the CBD’s unique neighborhood dynamics, which rely on the nation’s densest agglomerations of commercial uses?

If the goal is to use hotels as an opportunity for more cost-effectively building affordable housing, that additional value must come from somewhere. Hotels present three possibilities: cheaper acquisition costs, if hotels’ financial distress drives prices lower; cheaper construction costs, if hotels can be converted into apartments with minimal construction work; or higher revenues, if hotels’ dense layouts and small units allow for more revenue per square foot. As this brief has articulated, New York’s land use laws are not designed to maximize these conditions; whether and where they should be is one central question facing policymakers.

Finally, some of the appeal of hotel conversions is its potential immediacy. Buildings exist and rooms are empty. But they will not stay empty forever as travel rebounds. The appeal of conversions is likely greater now than it will be later. However, building affordable housing is almost always slower than building market-rate housing, given the necessary involvement of public players and the need to assemble a package of subsidies. Market-rate housing may be better placed to exploit the narrow window in which hotel conversions are especially attractive financial deals.

iii. Supportive Housing

Many of the regulatory considerations facing the conversion of hotels to housing do not apply to the creation of supportive housing, which is generally treated differently than non-supportive housing as a matter of New York land use law. This can allow for converting hotels into supportive housing, with minimal renovations required. Recently, for example, a former Jehovah’s Witnesses-owned hotel located at 90 Sands Street in Brooklyn’s Dumbo neighborhood, with 508 rooms, was repurposed to provide around 300 supportive housing units for formerly homeless New Yorkers and another 200 below-market-rate apartments.⁸² The acquisition and renovation of the property were supported by funding and financing from HPD, HDC, and philanthropic sources.⁸³

Converting to supportive housing offers distinct regulatory advantages. Many supportive housing facilities are classified under the city’s zoning resolution as non-profit institutions with sleeping accommodations, which are community facilities rather than residences. Supportive housing thus operates under a different regulatory framework. It is not subject to the zoning resolution’s density controls, for example: those provisions cap the number of “dwelling units” allowed, but a community facility is not a dwelling unit, as it is not residential. In some zoning districts, community facilities do not require off-street parking, unlike residential uses.⁸⁴ A community facility in a commercial district can comply with the 20-foot rear yard requirement for commercial buildings, as opposed to the deeper 30-foot requirement for residential buildings.⁸⁵ And community facilities also are governed by their own light-and-air requirements, distinct and somewhat less strict than those governing residences.⁸⁶ In some cases, these different

⁸² N.Y.C. PLAN. COMM’N, *supra* note 64.

⁸³ Press Release, Breaking Ground, Breaking Ground Begins Transformation of 90 Sands Street (Nov. 23, 2020), <https://breakingground.org/press/breaking-ground-begins-transformation-of-90-sands-street>

⁸⁴ Compare N.Y.C. ZONING RESOL. § 25-23 (Parking requirements for residential uses) with § 25-31 (parking requirements for community facilities in residential zones) and N.Y.C., ZONING RESOL. § 36-21 (parking requirements for community facilities in commercial zones).

⁸⁵ N.Y.C. ZONING RESOL. § 33-01 (applicability); § 33-26 (rear yard requirement)

⁸⁶ N.Y.C. ZONING RESOL. § 24-60.

rules will allow hotels to be converted to supportive housing, but not to housing classified as “residential” under the zoning resolution. (Though importantly, supportive housing is still not permitted in manufacturing districts.⁸⁷) Notably, the 90 Sands Street conversion allowed an almost one-to-one conversion of hotel rooms into supportive housing units without any need for large-scale renovations or the reconfiguration of units (this was made easier by the previous use of the building as a hotel meant for long-term stays).⁸⁸

Even greater regulatory flexibility is available for certain hotels subject to rent stabilization. Hotels can become rent-stabilized if erected on or before July 1, 1969, charged only up to \$88 per week or \$350 per month as of May 31, 1968, and are occupied by a permanent tenant.⁸⁹ Rent-stabilized hotels can sometimes be operated as supportive housing without changing their certificate of occupancy. Because there is no official change of use, under this scenario, neither new zoning requirements nor the accessibility requirements of the building code are triggered. Such circumstances provide one of the most immediate mechanisms for conversion from a hotel-like business model to a housing-like use.

Building supportive housing comes with its own difficulties—not least among them the need for public subsidy and the many challenges facing all affordable housing development. However, supportive housing may often be a more promising use for distressed hotel properties. The architectural configuration of hotels is also more consistent with supportive housing models—including an emphasis on shared facilities. And there is a regulatory path towards a quasi-residential use that may not require extensive renovations.⁹⁰

IV. Conclusion

As this analysis suggests, the opportunities for using distressed hotel properties to create new housing are real, but limited. Some hotels can quickly convert to long-term housing under current law (indeed, some already have announced plans to do so, and more may in upcoming months), but for many, land use laws would either require extensive renovations before a hotel could be used as housing or prohibit residential uses entirely. Even with broad state regulatory authorization for hotel conversions, some projects will remain unattractive; ultimately, a deal-by-deal, site-by-site analysis will be required.

At their best, hotels offer an appealing source of long-term housing. They are already designed to provide people with shelter, after all. And when rooms are available and not being used, even as housing is so desperately needed, there is an opportunity to turn temporary shelter into long-term shelter. But in practice, many hotel conversions would require such significant renovations that they would not take any special advantage of hotels’ current semi-residential design. New York City’s hotel stock—which is concentrated in Manhattan, has smaller-than-average rooms and, presumably, fewer extended stay properties with kitchenettes—does not lend itself to the easiest conversions, and New York’s laws, which are meant to protect tenants and neighborhoods, impose additional limitations. And while the premise of using distressed hotels is

⁸⁷ N.Y.C. ZONING RESOL. § 42-10, 42-12.

⁸⁸ Technically, though only 60 percent of the units are officially supportive housing, DOB treats them all as community facilities for these purposes, pursuant to Buildings Bulletin 2011-003. N.Y.C BLDG. DEP’T, BUILDING BULLETIN 2011-003 (Feb 17, 2011), https://www1.nyc.gov/assets/buildings/bldgs_bulletins/bb_2011-003.pdf

⁸⁹ 9 N.Y.C.R.R. § 2520.11.

⁹⁰ For another example, see Sebastian Morris, *Park 79 Hotel At 117 West 79th Street Set For Senior Affordable Housing Conversion, On Upper West Side*, N.Y. YIMBY (Oct. 20, 2020), <https://newyorkyimby.com/2020/10/park-79-hotel-at-117-west-79th-street-set-for-senior-affordable-housing-conversion-on-upper-west-side.html>

to save on acquisition costs, the acquisition price will reflect the market value of all potential future uses, which may still be high. Only at specific sites will hotel conversions be any more appealing to residential developers than the acquisition of any other property for housing development. Options are fewer still if the goal is to avoid losing union jobs. Given this reality, care should be taken not to overstate the promise of hotel conversions as a source of long-term housing. The number of sites where conversions are likely to be promising may be small.

Moreover, hotel conversions are not a panacea for *affordable* housing development. Building affordable housing through hotel conversions can be conceptualized as involving two separate processes: the conversion from hotel to housing, and the income-restriction of that housing. Both processes are costly. This poses the risk that funds that could subsidize the income-restriction process would be required to subsidize the conversion process as well. Any spending program meant to encourage conversions should be carefully structured to ensure that hotel conversions are used to support affordable housing production, rather than the other way around.

In many cases, the use of hotels for supportive housing, which under the right circumstances can be done without extensive renovations, may be a better fit—especially in the absence of extensive regulatory relief for hotel conversions. Such conversions are already more feasible under current law as well—although prohibitions on development in manufacturing districts, among others, remain important limitations. However, given the deep subsidies required for supportive housing, there are practical budgetary constraints on how many hotels can be converted to supportive housing as well.

In individual cases, distressed hotels provide an opportunity for the production of new housing, including affordable housing. New York is right to consider how to seize that opportunity before it closes entirely. But looking to hotels as a source of housing does not avoid the need for difficult policy choices, and indeed adds new ones: the right balance between jobs and housing across different neighborhoods, the right level of state intervention into local land use planning, and how much to compromise on housing quality standards that demand apartments larger and with more features than a standard hotel room. This brief describes the legal status quo for hotel conversions in order to help clarify what those choices really entail. Additional work is required to bring these considerations to the level of neighborhoods and individual properties.