



Comments Received by the Department of Consumer and  
Worker Protection  
on  
Proposed Rules to implement Local Laws 80  
and 99 of 2020

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December 29, 2020

## **Comments from the Hotel Association of New York City (HANYC)**

### **Public Hearing of the New York City Department of Consumer and Worker Protection**

My name is Vijay Dandapani, and I am President & CEO of the Hotel Association of New York City (“HANYC”) a trade association representing some 300 hotels in New York City.

Local Law 99 will negatively impact our member hotels and to that end, I wanted to take this opportunity to share some comments we have received from members about the challenges this law will pose to their ability to operate and their suggestions for revisions to the language that would lessen the law’s negative impact.

This law puts a burden on hotels at a time when the industry is already struggling to stay afloat, with many hotels already having to close their doors permanently. Please see below for a compilation of comments and questions from HANYC’s member hotels, outlining some of the issues hotels see with implementation and the concerns they have:

#### **1. Communicating with Guests on Service Disruptions:**

- a. Many hotel guests book rooms through third party bookings, group housing, or sites such as Expedia or Booking.com, which often have multiple layers of agencies involved, are located in different time zones, and other issues that affect a hotel’s ability to communicate with all of their guests. As a result of these third-party bookings, many hotels do not have a sufficient line of communication to their guests to provide them with the proposed service disruption notifications.
- b. Would be helpful to clarify what would constitute a “reasonable effort” to reach guests
- c. Would be helpful to clarify what “proof of notification” is acceptable for the City. For example: Does a notification posted on the hotel’s website constitute enough of a notice of a service disruption for guests?

#### **2. Clarifying the Scope of Service Disruptions:**

- a. Would be helpful to get clarity on how to deal with service disruptions that are beyond hotels’ control. Some hotels have expressed concerns about receiving penalties for disruptions to their utilities (i.e. caused by Con Edison), internet and phone services (Verizon, Charter, Altice, etc.), loud construction on the street or neighboring buildings, or even disruptions caused by other hotel guests, such as fire alarms, noise, etc.
- b. Hotels would also like greater clarity about the duration of the disruption that would require them to notify their incoming guests that there is a service disruption.



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- i. For example, if a hotel has issues with their utilities, such as WiFi, phone service, or hot water, for a few hours one afternoon, would that temporary issue require them to notify all of their incoming hotel guests of a service disruption?
- c. Hotels would also like the law to clarify how it will handle service disruptions that are caused by COVID-type orders from the government in the present pandemic and in any future health emergencies.
  - i. Specifically, hotels want to ensure that they are not penalized for any service disruptions or amenity closures pursuant to government orders beyond their control, such as the closure of gyms, dining facilities, use of common space, etc.
  - ii. COVID-era orders have direct—and rapid—impacts on the availability of hotel amenities. The use of a hotel amenity is merely ancillary to the guest’s core experience—overnight lodging—and hoteliers shouldn’t be penalized where a service disruption is occasioned by a governmental authorities responding to some type of emergency (like a pandemic) for health reasons.
- d. Hotels would also like greater clarity surrounding the provision related to the “intent to correct an emergency condition” and to better understand what constitutes an “emergency condition.”
- e. Hotels have expressed concerns about guests making claims about being substantially affected by “service disruptions” that were beyond their understanding of the proposed law.
  - i. For example, if a hotel has a two-pipe system to deliver heat and cool air throughout the facility, which can make regulating the temperature more difficult during the transition months of the Spring and the Fall, would they be penalized if a guest were to raise this issue, even though they did not view this to be within the grounds of a “service disruption”?

**Previously Suggested Clarifications to Local Law 99:**

These changes were suggested to the Council during their legislative discussions, but were not addressed in the language of the bill. We’re including these here to provide additional color on which sections might need additional clarity moving forward:

- Under section 20-850, (i), expressly define “*substantially likely to disturb a guest*” as: “*Construction that is conducted between the hours of 10:00 PM and 6:00 AM.*” I.e., during a reasonable sleeping timeframe.
- Under section 20-850 (ii), expressly define “*capable of spreading disease or being carried*” as: “*Vermin identified as possessing the capability of spreading disease or being carried by the U.S. Centers for Disease Control and Prevention.*”



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- Under section 20-850 (iii), expressly condition “unavailability” under this provision as: *“Prohibitions, restrictions or other impediments made to any advertised hotel amenity as a result of a Mayoral Emergency Executive Order or Gubernatorial Executive Order do not constitute unavailability in this limited circumstance.”*
- Under section 20-850 (vi), condition “unavailability” under this provision as: *“Where a particular utility is standardly available.”*
  - *E.g., gas may not be a component for every guest room.*
- Under section 20-850 (vii), expressly define “activity, demonstration or event” as: *“Actions lawfully sanctioned in writing by a union officially authorized to represent employees of the hotel.”*
- Under the same section, expressly define “immediately adjacent” as: *“Within \_\_\_ feet of the hotel, and directly related to such hotel.”*
- Under section 20-851 a., there needs to be a clarifying statement in the rules, that: *“A hotel’s notification of a service disruption to a third-party vendor shall constitute the hotel’s compliance with § 20-851(a) for any guest that has entered into an applicable reservation, booking, or agreement with the third-party vendor.”*

**Additional comments from members:**

Components of the law that member hotels would like to see clarified and other comments on the challenges this law will create for them and their ability to operate:

- Many times, a method to communicate with arriving guests is not obtained, such as 3<sup>rd</sup> party bookings, group housing, or bookings via sources such as Expedia or Booking.com. Defining a reasonable effort to reach guests to avoid fines and penalties is necessary.
- Understanding “intent to correct an emergency condition” - what constitutes an “emergency condition”? If you close a restaurant or a public space for a private function, is this a violation?
- Understanding and defining what proof of notification is acceptable for the City
- Handling of a service disruption that was not in control of the Hotel but rather caused by an attached neighbor building of which you have no control.
- Understanding the service disruption process when the guest causes the issue such as fire alarms, etc.
- Does Notification on the Hotel’s website constitute enough of a notice?



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- With third party providers having many layers, this notification procedure is unreasonable in its expectation concerning a hotel's ability to monitor all agencies involved. For example, an OTA (online travel agency) can act as a wholesaler and sell to other agencies.
- The timing of such disruption notifications is unreasonable as many OTA partners are in different time zones.
- It is unreasonable to have the burden on us as this is beyond our control. We should not be held responsible for the consequences of the failure to provide utilities such as Con Ed (no steam) or Verizon (phone line failure).
- Once a guest reserves and deems that they will be "substantially affected" by said disruption we need to be able to defend such accusation. For example, a hotel that has a two-pipe system and can either provide heat or cool air exclusively, transition months in Spring and Fall should not cause a penalty as this would be unreasonable.
- Timing restrictions on notifications will not allow for reasonable due diligence and therefore hotel should not be penalized for it.
- Although we are temporarily closed, when we reopen, this will be an issue. Being transparent with our arriving guests is critical, an example that I can correlate this is when many hotels were charging the destination fee or anything specific to the property an OTA doesn't always post this information as it is on the branded web page. Then when the guest arrives, they are told for the first time of an additional fee. This ultimately becomes a customer service issue and at times the hotel will be forced to rebate the amount. The more transparent we can be consistently across all channels is simply the right thing to do on behalf of the consumer.

Thank you.

Sincerely,

Vijay Dandapani  
President & CEO  
Hotel Association of NYC (HANYC)