

## Suit Charges City Wants to ‘Eradicate’ Unwanted Hotels

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The InTown Suites Trinity Mills is one of two Carrollton, TX hotels involved in the suit against the city.

A legal battle brewing in suburban Dallas could have significant property-rights implications for hoteliers across the nation. Owners of two InTown Suites extended-stay properties in Carrollton, TX recently sued the city, claiming it improperly revoked their lodging licenses based on a law they call “capricious and arbitrary.”

Attorneys for the plaintiffs, led by Richard Barrett-Cuetara, head of the hotel practice for Dallas-based Cowles & Thompson, filed for a temporary injunction of the city’s bid to close the hotels. A hearing on the injunction motion is set for Aug. 12 in Dallas. Legal representatives of the city couldn’t be reached for comment on the suit.

At the heart of the issue is a Hotel Licensing Code passed in 2008 without public discussion by the Carrollton City Council which links the granting of a license to a hotel to incidences of police and emergency calls to the property as well as the hotel’s record of compliance with city building, zoning, fire, safety and health regulation codes. The plaintiffs in the suit call the licensing scheme “unconstitutional” and “obviously crafted and designed not to work with hotel operators to improve their properties but to inevitably bar hotels from being able to operate as businesses within the city.”



Richard Barrett-Cuetara, head of the hotel practice at Cowles & Thompson

“It’s ironic because Carrollton calls itself a business-friendly city, but they’re not acting accordingly,” says Barrett-Cuetara. “This is the most restrictive anti-hotel statute in the country. It could be a nightmare for many hotels if this idea catches on across the country.”

The code, which in their suit the InTown owners refer to as a “Hotel-Eradication License Scheme,” requires the city to revoke or deny renewal of a hotel license if in a 12-month period the number of emergency calls or violations of any of the city’s code provisions exceeds 10% of the number of rooms in the property. Once a license is denied or revoked, a hotel can’t apply for reinstatement for three years.

So, a 100-room property can lose its license if it racks up as few as 11 violations. The plaintiffs say inspectors cited their properties for so-called violations such as a missing sign, a chair the inspector thought was dirty, a chipped nightstand, a non-working TV and a door the inspector felt needs painted. Even if the hotel resolves the issues, which the owners say they spent \$200,000 to do over nearly three years, the violations history can be used to deny a license renewal, something Barrett-Cuetara calls a form of double jeopardy. (The hotels pled no contest to more than 130 alleged violations and paid \$21,000 in fines. The city agreed the hotels were in compliance but pulled the licenses anyway.)

“There’s a trilogy of issues in this suit,” he says. “First, the city seems to be targeting lower-end extended-stay properties because they want to get rid of so-called riff raff customers. Another provision of the law is especially egregious.”

Barrett-Cuetara says even if the city approves a license for a hotel, which is in effect for a year from issuance (Apr. 1 through Mar. 31), inspectors can visit the property at any time, cite the owner for code violations and then look back up to 12 calendar months. If the current and previous violations exceed the 10%-of-rooms hurdle in the ordinance, the license can be revoked.

“It’s horrendous. Not only do the owners need to worry about being code-compliant on an annual basis, but they’re exposed to the threat that any given day or month their license can be revoked,” he says. “What lender is going to provide financing with that kind of statute hanging over the hotel’s head? And what developer would consider building a hotel in such a community?”

Financing is at the center of another far-reaching issue involved in the InTown Suites situation. Financing of the properties is bundled in two CMBS-backed loans (one for \$112 million and including 39 other InTown properties; the other, \$88 million with 29 other hotels) that each contains cross-default provisions. Closure of either property could trigger default in its loan package.

“100% of the chain is wrapped up in these two CMBS loans,” says Barrett-Cuetara. “If both properties close, it could cause a nationwide default in excess of \$200 million.”

In a final touch of irony, Carrollton city government recently made a deal to provide tax breaks to a developer, Lowen Holdings, to build a meetings-oriented hotel in the city. Size of the property or brand affiliation haven't been announced. A local press report quoted Mayor Ron Branson as saying, “Carrollton has gotten way behind other cities as far as that type of development. We have a hundred-some thousand people, and we have no hotel.”

Hotel consultant and extended-stay expert Mark Skinner says bias against extended-stay hotels is not uncommon in many communities. According to Skinner, partner in Atlanta-based Highland Group, some cities discourage extended-stay development by not allowing exterior-corridor buildings or kitchen facilities in guest units. Another ploy is limiting guests to prescribed lengths of stay in hotels, often 30 or 45 days in a row.