HABITABILITY IN THE HOOSIER STATE: PROTECTING THE HEALTH AND SAFETY OF INDIANA'S EXTENDED-STAY MOTEL GUESTS

JACOB PURCELL*

INTRODUCTION

In February 2021, the City of Plainfield, Indiana took action against a human rights abuser on Main Street: the Ashley Motel.[1] The Ashley Motel was home to many long-term residents, who paid rent by the week and stayed there for months or even years at a time.[2] For many years, Plainfield officials and the Hendricks County Health Department received complaints of "deplorable" conditions at the Ashley Motel.[3] Some were life threatening, such as: reports of black mold; units without working toilets; a broken sewer line under the property; holes in the walls, ceilings, and roof; lack of air-conditioning; and lack of adequate fire extinguishers or alarms.[4]

Worse, residents complained for years of persistent cockroach and bedbug infestations.[5] One family had to rush to the emergency room because their child had been bitten by bedbugs so many times that he sustained an allergic reaction.[6] Instead of hiring a professional exterminator, the motel owners often had one unlicensed maintenance worker spray a haphazard chemical concoction in residents' rooms,[7] often without notice, ruining residents' personal belongings.[8] One resident had an allergic reaction to this concoction, causing him to miss work for a week.[9] When a professional exterminator was finally hired to address rampant pest infestations, the owners directed staff to keep the exterminator from spraying large swaths of the Ashley Motel, apparently to conceal the extent of

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* J.D. Candidate, 2024, Indiana University Robert H. McKinney School of Law; B.A. 2021, Indiana University Purdue University Indianapolis – Indianapolis, Indiana. The Author would like to thank Clinical Professor Fran Quigley, Plainfield Town Manager Andrew Klinger, and Maggie McMillan for their helpful guidance and feedback.

1. *See* Town of Plainfield's Verified Compl. for Injunctive Relief and Damages, Town of Plainfield v. Evergreen Props. Two LLC, No. 32D04-2102-PL-000029 (Feb. 26, 2021) (No. 32C01-2102-PL-000029) [hereinafter *Complaint*] (on file with the author).

2. *Id.* at 2.

3. *Id.* at 4-5.

4. *Id.* at 5.

5. *Id.* at 6.

6. Exhibit F Decl. of Bobby Scroggins at 2, Town of Plainfield v. Evergreen Props. Two LLC, No. 32D04-2102-PL-000029 (Feb. 26, 2021) (No. 32C01-2102-PL-000029) [hereinafter *Exhibit F*] (on file with the author).

7. *See* Exhibit B Decl. of Scott Smock at 3, Town of Plainfield v. Evergreen Props. Two LLC, 32C01-2102-PL-000029 (Feb. 26, 2021) (No. 32C01-2102-PL-000029) [hereinafter *Exhibit B*] (on file with the author); *see also Complaint*, *supra* note 1, at 6.

8. *Exhibit F*, *supra* note 6, at 5.

9. *Exhibit B*, *supra* note 7, at 4.

infestations.[10]

When residents complained about bug infestations, the owners would accuse them of "having too much food in the room" and fine them $30 or $50,[11] or worse, threaten residents with eviction.[12] Many residents were evicted, usually only days after rent was due.[13] To carry out evictions, the owners would lock residents out of their rooms without warning, sometimes trapping residents' pets inside.[14] Further, the Ashley Motel became a hot spot for public safety issues, with a disproportionate number of calls to law enforcement, evidenced by 375 police runs from January 2019 to February 2021[15]

However, the owners perpetrated the most shocking abuses against the "working residents" of the complex. The Ashley Motel's owners recruited maintenance and administrative staff from the long-term resident population and required them to work forty- to sixty-hour weeks and be on call at all hours to address motel issues.[16] Despite this full-time job, most working residents were only given a $75 to $100 discount on their weekly rent,[17] less than half the average rent charged.[18] Owners consistently threatened working residents not only with eviction, but also physical removal from the property by police if they failed to carry out the orders of management, which were frequently unlawful and dangerous.[19] Many stopped complaining because they had nowhere else to go and were afraid of becoming homeless.[20]

To this author's knowledge, the abhorrent conditions and human rights abuses at the Ashley Motel never caught the attention of local media and were never reported on, making the case largely unknown to anyone other than Plainfield officials. In other words, the Ashley Motel and its many abuses hid from public scrutiny for years.

The residents of the Ashley Motel were predominantly members of a growing

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10. Exhibit E Decl. of Russell Lane at 3, Town of Plainfield v. Evergreen Props. Two LLC, No. 32D04-2102-PL-000029 (Feb. 26, 2021) (No. 32C01-2102-PL-000029) (on file with the author).

11. Exhibit C Decl. of Victoria Boykin at 3, Town of Plainfield v. Evergreen Props. Two LLC, No. 32D04-2102-PL-000029 (Feb. 26, 2021) (No. 32C01-2102-PL-000029) [hereinafter *Exhibit C*] (on file with the author).

12. *Complaint*, *supra* note 1, at 6.

13. *Id.* at 3-4.

14. *Id.*

15. *Id.* at 4.

16. *Id.* at 3.

17. *Id.*

18. *Exhibit C*, *supra* note 11, at 3 (noting the weekly room rates were "$215 for one bed/one person"; "$230 two people/one bed"; "$245 one person/two beds"; "$260 for two persons/two beds"; and "15 extra per person in two bedroom").

19. *Complaint*, *supra* note 1, at 3.

20. *Id.*; *see* Exhibit H Decl. of Rick Feistel at 3, Town of Plainfield v. Evergreen Props. Two LLC, No. 32D04-2102-PL-000029 (Feb. 26, 2021) (No. 32C01-2102-PL-000029) (reporting under penalty of perjury that "[s]ince I really needed a place to stay and I did not want to be homeless, I continued to work when I was told") (on file with the author).

group of Americans known as extended-stay motel or hotel residents. Extended-stay motel residents are those who live at motels or extended-stays for a prolonged time, usually months or even years.[21] This Note argues that extended-stay motel guests are socially and legally disenfranchised, and particularly vulnerable to exploitation at the hands of negligent motel owners. In Section I, this Note examines the unique challenges that burden extended-stay motel guests. Next, Section II examines whether extended-stay motel guests can avail themselves of the rights of Indiana Tenants. Finally, Section III examines the powers Indiana municipalities have to protect extended-stay motel guests from uninhabitable conditions and public safety issues.

I. AN OVERVIEW OF EXTENDED-STAY MOTEL RESIDENTS

Middle and low-income families and individuals have turned to hotels and motels for housing for "an ad hoc solution" to avoid being unsheltered since the post-Depression period.[22]

In the modern era, the use of motels for this purpose has surged due to decreasing public housing availability, decreases in rental availability, resident opposition to the construction of affordable housing, lower wages, larger home designs, and increased land costs.[23] News coverage of motels often reports crime, drugs, and difficult living conditions.[24] These local stories, however, rarely attempt to understand the people living in extended-stay motel arrangements—an understudied population with its own unique challenges.

A. The Invisibility of Extended-Stay Motel Residents

The increasing phenomenon of extended-stay motel residents is understudied, largely due to gaps in data collection practices.[25] Extended-stay motel residents have recently been dubbed "America's hidden homeless" in the media.[26] Social groups are often studied using United States Census Bureau data; however, the entire process by which the United States Census Bureau conducts its data collection is largely incompatible with gathering data on those who live in extended-stay hotel arrangements.[27] The Census Bureau has only recently, within

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21. KATHLEEN ALLEN ET AL., LIVE NORCROSS, WHEN EXTENDED-STAY BECOMES HOME 7 (2019), https://gwinnetthousing.org/wp-content/uploads/2019/05/extended-stay-survey-report-052019.pdf [https://perma.cc/9KPX-PHEE] [hereinafter NORCROSS].

22. Terri Wingate-Lewinson et al., *Liminal Living at an Extended Stay Hotel: Feeling "Stuck" in a Housing Solution*, 37 J. SOC. & SOCIO. WELFARE 9, 11 (2010).

23. *Id.*

24. *Id.*

25. Shaina O. Thompson, *Higher Risk of Homelessness for Extended-Stay Hotel Residents*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 245, 254 (2020).

26. *See, e.g.*, Carolyn Bick, *America's Hidden Homeless: Life in the Starlight Motel*, AL JAZEERA (July 30, 2016), https://www.aljazeera.com/features/2016/7/30/americas-hidden-homeless-life-in-the-starlight-motel [https://perma.cc/WH5S-EB7F].

27. Thompson, *supra* note 25, at 254-55.

the last twenty years, even sought to study this group.[28]

Forms of data collection that capture information about homeless populations also inadequately capture the scale of Hoosiers living in extended-stay motel arrangements. The most comprehensive source of local data on homeless populations is the Point-in-Time (PIT) Count, conducted annually through the Department of Housing and Urban Development (HUD).[29] The PIT Count aims to identify two primary types of individuals experiencing homelessness: sheltered and unsheltered.[30] Unsheltered individuals experiencing homelessness are identified through on-foot canvassing.[31] Conversely, surveys of temporary shelters capture data on sheltered individuals, which typically do not include surveys of adults in motels and hotels.[32] However, the Department of Education also conducts surveys through the McKinney-Vento Act, which specifically addresses youth.[33] This count embraces a broader definition of homelessness, including those who are "doubled up" (i.e. living with others), living in shelters, or staying at motels and hotels.[34] After those "doubled-up," hotels and motels are the second most common location for McKinney-Vento eligible children in Marion County.[35] In 2020, there were 271 children recorded living in hotels and motels.[36] However, by 2022, this number had increased to 332, over ten percent of McKinney-Vento-eligible youth, far exceeding the number of applicable youth in shelters.[37] It stands to reason that given Indiana's population distribution, the number of adult Hoosiers living in hotels and motels is likely much, much higher.

Because extended-stay guests often exist in a liminal space between homeless and housed individuals—not considered traditional tenants, but too stable to be considered homeless—they are often understudied.[38] Indeed, other important housing-specific measures neglect extended-stay motel residents.[39] For example,

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28. *See* LESLIE A. BROWNRIGG, U.S. CENSUS BUREAU, PEOPLE WHO LIVE IN HOTELS: AN EXPLORATORY OVERVIEW (2006), https://www.census.gov/content/dam/Census/library/working-papers/2006/adrm/ssm2006-03.pdf [https://perma.cc/J8CX-GU5A].

29. *See* KELSIE STRINGHAM-MARQUIS ET. AL, IND. UNIV. PUB. POL'Y INST. CTR. FOR RSCH. ON INCLUSION & SOC. POL'Y, HOMELESSNESS IN INDIANAPOLIS: 2020 MARION COUNTY POINT-IN-TIME COUNT (2020), https://scholarworks.iupui.edu/bitstream/handle/1805/24103/PIT-Homeless-Count_CHIP_July.30.2020.pdf?sequence=1&isAllowed=y [https://perma.cc/XH3C-VDC5].

30. *Id.* at 2.

31. *Id.* at 1-2.

32. *Id.*

33. *Id.*

34. *Id.* at 14.

35. *Id.*

36. *Id.* at 15.

37. BRENDAN BOW ET AL., IND. UNIV. PUB. POL'Y INST. CTR. FOR RSCH. ON INCLUSION & SOC. POL'Y, HOMELESSNESS IN INDIANAPOLIS: 2022 MARION COUNTY POINT-IN-TIME COUNT 9 (2022), https://www.chipindy.org/uploads/1/3/3/1/133118768/final-pit-2022-report_crisp.pdf [https://perma.cc/EE72-KG4U].

38. Wingate-Lewinson et al., *supra* note 22, at 13-14.

39. Thompson, *supra* note 25, at 254.

neither the U.S. Census Bureau, nor Eviction Lab, nor any other independent organization has collected any data about evictions or displacement and the extended-stay hotel residents in the United States.[40] However, despite the lack of quantitative information, researchers have gained insight into the population characteristics and unique challenges of extended-stay residents which make them particularly vulnerable to negligent and abusive hotel and motel owners.

B. Known Population Characteristics of Extended-Stay Motel Residents

A survey of Norcross, Georgia, extended-stay motel residents uncovered interesting and counterintuitive information about the local population of extended-stay motel residents. First, the study described extended-stay motels as "de-facto senior housing" because twenty-nine percent of those surveyed were over the age of fifty-five.[41] The study also uncovered that the extended-stay motel residents surveyed were more likely to be people of color than the general Georgia population.[42]

Although some institutional sources (such as the Department of Education through the McKinney-Vento Act) identify those living in extended-stay motels as homeless, many do not consider themselves homeless and live in extended-stay motels for prolonged periods of time.[43] In fact, many individuals begin living in extended-stay motels as a result of an eviction or bankruptcy, and the extended-stay motels become a final safety net before homelessness.[44] Contrary to expectations, the Norcross study uncovered that those who live in extended-stay motels are not the poorest of the poor, but are instead the working poor.[45]

C. Unique Challenges Driving Exploitation of Extended-Stay Motel Residents

The 2019 Norcross extended-stay motel study asked residents what their largest obstacle to permanent housing was, and common responses included disability and old age, poor or nonexistent credit, lack of savings for a rental deposit, prior evictions, and prior criminal history.[46] Some residents noted that motels were the only places they could afford due to a lack of savings, but after moving in, their motel costs became so high that they could not accumulate savings for a deposit on a new apartment.[47] In fact, the survey revealed that on average, families were spending over $1,000 per month on housing-related costs for extended-stays.[48] This largely aligns with the testimony of Ashley Motel's working residents. One resident testified that the cheapest rates there, for a single

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40. *Id.*
41. NORCROSS, *supra* note 21, at 11.
42. *Id.* at 8.
43. *Id.* at 7.
44. *Id.*
45. *Id.*
46. *Id.* at 97-102.
47. *Id.*
48. *Id.* at 81-82.

person and single bed, were $215 weekly, or over $860 monthly.[49] The Norcross study estimated that eighty-five percent of its residents were cost burdened, meaning they spent more than thirty-five percent of their income on housing-related costs.[50] Further, one out of four households interviewed spent more than eighty percent of their income on housing, indicating a severe cost burden.[51]

Another study, conducted in 2010, uncovered comparable demographic findings. It concluded that the participating families had household heads working in blue collar fields with incomes ranging from $11,200 to $32,000 annually.[52] This study similarly concluded that families experienced difficulty when leaving extended-stay motel arrangements to find more permanent housing, often describing the experience as stressful.[53] Similarly, a 2017 study of Central Florida extended-stay motel residents concluded that all of the families studied had histories of poverty and financial challenges growing up.[54]

In sum, extended-stay motels, despite initially serving as a safety net, can become a trap for their disproportionately working poor residents. Residents end up at extended-stay motels, often after an eviction or bankruptcy, and cannot assemble enough funds to either move away or find alternative, more stable housing. Given residents' lack of mobility, it is incumbent upon the law to effectively remediate health and safety issues in extended-stay motels.

II. PROTECTING EXTENDED-STAY MOTEL RESIDENTS PROTECTED UNDER INDIANA LANDLORD-TENANT STATUTES

One highly pertinent but unanswered question is whether extended-stay residents in Indiana are considered tenants under the law. The answer remains very ambiguous. The ambiguity arises from Indiana Code section 32-31-2.9-4, which restricts the applicability of Indiana landlord-tenant statutes, providing, among other categories, that "[t]ransient occupancy in a hotel, motel, or other lodging" is exempt from Indiana's landlord-tenant statutes.[55] However, the statute does not provide a definition for "transient occupancy."[56] Therefore, it is unclear whether "transient occupancy" encompasses Indiana's extended-stay motel residents like those at the Ashley Motel. This leaves Indiana's extended-stay motel residents in limbo as to whether they possess any of the protections afforded to Indiana tenants.

If considered tenants, extended-stay motel residents could avail themselves of the numerous protections afforded to Indiana tenants. First, this includes the

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49. *Exhibit C*, *supra* note 11, at 3.

50. NORCROSS, *supra* note 21, at 8.

51. *Id.* at 9.

52. Wingate-Lewinson et al., *supra* note 22 at 17.

53. *Id.* at 19.

54. Stephanie Gonzalez Guittar, *Barriers to Food Security Experienced by Families Living in Extended Stay Motels*, 44 J. SOC. & SOCIO. WELFARE 29, 45 (2017).

55. IND. CODE § 32-31-2.9-4 (2022).

56. *See id.*

non-waivable express warranty of habitability that underlies Indiana residential leases.[57] Specifically, this statute requires landlords to "[d]eliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition."[58] Second, Indiana tenants have the ability to sue their landlord for "[a]ctual damages and consequential damages" and injunctive relief if their landlord fails to adhere to statutory duties.[59] Third, Indiana tenants are entitled to due process, protecting them from self-help evictions[60] or a landlord's attempts to remove them through direct action, such as changing locks or turning off utilities.[61] Fourth, extended-stay motel residents would be entitled not only to an opportunity to be heard in eviction court, but ten days' notice to either pay rent or move out.[62] Finally, if granted the same rights as tenants, extended-stay motel guests would receive protections under Indiana's retaliatory eviction statute.[63] The abuses suffered by the residents of Ashley Motel could have been precluded by the protections these rights offer.

A. What Is "Transient Occupancy" Under Indiana Law?

Indiana appellate courts have yet to examine the meaning of "transient occupancy" under Indiana Code section 32-31-2.9-4, leaving it unclear which extended-stay motel residents qualify. An analysis of Arizona law examined the meaning of "transient occupancy" under an analogous statute by looking for definitions of "transient" elsewhere in the state code, specifically highlighting a tax provision.[64] However, this approach is not possible in Indiana because the state lacks a statute defining "transient" in any context. There are only a few other uses of "transient" in the Indiana Code, and almost all examples are unhelpful to analysis.

First, the Indiana Code extensively defines the term "transient merchant" to regulate sellers who do business "traveling from place to place in this state."[65] This is generally unrelated to landlord-tenant law or even real property. In other instances, the Indiana code uses "transient" as a catchall term to encompass instances where a structure is analogous to a hotel or motel. This is the case for

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57. *See id.* § 32-31-8-5.

58. *Id.* § 32-31-8-5(1).

59. *Id.* § 32-31-8-6(d).

60. *Id.* § 32-31-5-6(c).

61. Beth Dillman, *Eviction Notices for Nonpayment of Rent in Indiana*, NOLO, https://www.nolo.com/legal-encyclopedia/eviction-notices-nonpayment-rent-indiana.html#:~:text=If%20the%20landlord%20attempts%20to,landlord%20to%20do%20(see%20Ind [https://perma.cc/44HB-888F] (last visited Feb. 4, 2023).

62. *See* § 32-31-1-6.

63. *See id.* § 32-31-9-8.

64. David W. Degnan & Joshua C. Black, *Saying Goodbye to Unwanted Guests: The Applicability of the Arizona Residential Landlord Tenant Act to Transient Occupants*, 8 ARIZ. SUMMIT L. REV. 145, 150 (2014).

65. § 25-37-1-2.

statutes regulating toll road project construction,[66] smoke detection devices,[67] drug nuisances,[68] and civil rights violations.[69] None of these statutes provide a definition of "transient" or are even contextually similar, since transient establishments, which describe structures with a general purpose of short-term housing, are very distinguishable from "transient occupancy," which describes an individual's actions.

B. Other Jurisdictions' Approaches to Defining "Transient Occupancy"

Fortunately for analytical purposes, Indiana's statute[70] has identical language to the exclusions set forth in section 1.202 of the 1972 Uniform Residential Landlord and Tenant Act (URLTA),[71] so it has widespread usage in other jurisdictions. At least nineteen states have nearly identical statutes to URLTA's section 1.202.[72] At least three of those states' appellate courts have examined section 1.202 in depth and provide persuasive authority for how Indiana courts could approach the issue.

First, the Oregon Supreme Court engaged with this issue in *Lyons v. Kamhoot*.[73] The *Lyons* Court examined whether a plaintiff who had stayed at the hotel for over a month while her fire-damaged house was being repaired fell into the definition of "transient occupancy."[74] The *Lyons* Court concluded that the plaintiff facially met the definition of "transient occupancy" because she intended to move back into her house after its repair.[75] This approach focuses on the subjective expectations of the prospective tenant.

Next, the North Carolina Court of Appeals concluded in *Baker v. Rushing* that hotel guests were not transient occupants and could therefore bring a habitability-related claim under landlord-tenant statutes.[76] The *Baker* Court named several facts that undermined the notion that plaintiffs were transient

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66. *Id.* § 8-15-3-8.

67. *Id.* § 22-11-18-1.

68. *Id.* § 32-30-8-2.

69. *Id.* § 22-9-6-2.

70. *Id.* § 32-31-2.9-4.

71. UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 1.202 (1972), 7B U.L.A. 292 (2006).

72. ALA. CODE § 35-9A-122 (2022); ALASKA STAT. § 34.03.330 (2022); ARIZ. REV. STAT. ANN. § 33-1308 (2022); ARK. CODE ANN. § 18-17-202 (2022); COLO. REV. STAT. § 38-12-511 (2022); CONN. GEN. STAT. § 47a-2 (2022); FLA. STAT. § 83.42 (2022); IOWA CODE § 562A.5 (2022); KY. REV. STAT. ANN. § 383.535 (West 2022); MISS. CODE ANN. § 89-8-3 (West 2022); NEB. REV. STAT. § 76-1408 (2022); N.M. STAT. ANN. § 47-8-9 (2022); N.C. GEN. STAT. § 42-39 (West 2023); OKLA. STAT. tit. 41 § 104 (2022); OR. REV. STAT. § 90.110 (2022); R.I. GEN. LAWS § 34-18-8 (2022); S.C. CODE ANN. § 27-40-120 (2022); TENN. CODE ANN. § 66-28-102 (West 2022); VT. STAT. ANN. tit 9, § 4452 (West 2022).

73. Lyons v. Kamhoot, 575 P.2d 1389 (Or. 1978).

74. *Id.* at 1390.

75. *Id.* at 1391.

76. Baker v. Rushing, 409 S.E.2d 108, 112 (N.C. Ct. App. 1991).

occupants, including: (1) that parties used their apartment as their sole and permanent residence; (2) that parties referred to their payments as "rent"; and (3) that each apartment contained either one or two bedrooms.[77] This invoked a more objective, fact-contingent inquiry into whether the parties were creating a landlord-tenant relationship and permanent residence.

Most recently, in *Bourque v. Morris*, the Connecticut Supreme Court established yet another standard for analysis.[78] In the case, the plaintiff was a welfare recipient whose rent was paid by the local government, and who had no other residence at which to stay.[79] However, when the local government stopped paying his weekly rent, he became two weeks behind in rent and the complex locked him out.[80] The plaintiff subsequently sued for damages under a state landlord-tenant cause of action.[81] In contrast to the *Baker* Court, the *Bourque* Court based its analysis on the reasonable expectations of the parties and whether they were creating a non-transient arrangement.[82] The Court put considerable stock in the fact that the hotel in question was (1) licensed as a hotel and (2) that other guests were there.[83] Additionally, the Court concluded the rent being paid weekly was immaterial, as there was no indication that the municipality would continue paying the plaintiff's rent indefinitely.[84]

Based on these cases, Indiana courts could look at the issue in one of three ways: (1) the *Lyons* approach, looking at the subjective intentions of the tenant; (2) the *Baker* approach, examining the case's facts to determine objectively whether the parties were creating permanent housing; and (3) the *Bourque* approach, looking to the reasonable expectations of the parties.[85] Although they vary, these approaches each parallel the concept of domicile, which invokes a fact-sensitive inquiry to identify "a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere."[86] These three approaches have varying efficacy in reliably affording extended-stay motel residents the rights needed to protect them from negligent and abusive motel owners.

C. Policy Recommendation: Common Law and Statutory Solutions

If Indiana courts were to apply the approaches in *Lyons*, *Baker*, and *Bourque* to extended-stay motel residents like those from the Ashley Motel, two of the

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77. *Id.*

78. Bourque v. Morris, 460 A.2d 1251 (Conn. 1983).

79. *Id.* at 1252.

80. *Id.*

81. *Id.*

82. *Id.* at 1254.

83. *Id.*

84. *Id.*

85. Lyons v. Kamhoot, 575 P.2d 1389, 1390-91 (Or. 1978); Baker v. Rushing, 409 S.E.2d 108, 112 (N.C. Ct App. 1991); *Bourque*, 460 A.2d at 1254.

86. 11 IND. L. ENCYC. DOMICILE § 1 (2023).

approaches would likely disenfranchise them from asserting essential rights normally afforded to tenants. The *Lyons* approach is the most problematic. As noted by the Norcross study, many extended-stay motel residents do not want to remain in motels long-term but cannot find or afford moving to rental housing.[87] In effect, situations like these can create a self-fulfilling prophecy where extended-stay motel guests who actively contemplate leaving uninhabitable housing lose their intention to live there long-term, and thus lack the requisite intent to gain the rights of tenants. The *Bourque* approach similarly requires evidence of the parties' reasonable expectations, so it is subject to the same inherent problems.[88] Only the *Baker* approach puts adequate stock in the most consequential and intuitive factor for extended-stay motel residents: length of stay.[89]

However, even if Indiana courts were to adopt similar reasoning to the North Carolina Court of Appeals in *Baker* to interpret Indiana Code section 32-31-2.9-4, unacceptable ambiguity would still be present, particularly in a complex inquiry. Ambiguity decreases the likelihood that extended-stay motel residents will have notice of their rights under the Indiana landlord-tenant statute, and therefore decreases the likelihood they will have the knowledge to counteract either self-help evictions or uninhabitable conditions. Although the *Baker* approach would be the most favorable, to truly protect extended-stay motel residents Indiana should adopt a statute codifying a clear rule.

Generally, there are two approaches in other jurisdictions for determining when a motel guest gains the rights of a tenant: (1) a bright-line rule based on the time a guest spends at the motel, and (2) the subjective standard of a tenant's intent to remain "for the foreseeable future."[90] The former is the approach in New York.[91] Although New York's statute sets an exemption for "transient occupancy," it also explicitly defines a tenant as "occupant of one or more rooms in a rooming house or a resident . . . of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer."[92] Other examples of statutes that similarly impose a bright-line rule based on days include California, Virginia, and Colorado.[93] Conversely, the latter construction is used in Wisconsin and Washington.[94] Although the Wisconsin and Washington statutes still rely on an extended-stay motel resident's intent, the foreseeable future standard is an

87. KATHLEEN ALLEN ET AL., WHEN EXTENDED-STAY BECOMES HOME 97-102 (2019), https://gwinnetthousing.org/wp-content/uploads/2019/05/extended-stay-survey-report-052019.pdf [https://perma.cc/9KPX-PHEE].

88. *Bourque*, 460 A.2d at 1254.

89. *Baker*, 409 S.E.2d at 112.

90. Thompson, *supra* note 25, at 253.

91. *Id.* at 254.

92. N.Y. REAL PROP. ACTIONS L. § 711 (2022).

93. Thompson, *supra* note 25, at 249.

94. WASH. REV. CODE ANN. § 59.18.030(30) (2022) (specifying that rental agreements include "all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit"); WIS. STAT. § 704.01 (2022).

easier standard to meet.

Adoption of a statute mirroring New York's, Wisconsin's, or Washington's would allow Indiana extended-stay motel residents to reliably avail themselves of the protections afforded to tenants. As previously noted, this would protect extended-stay motel guests from retaliatory eviction, self-help eviction, and would give a remedy to hold a motel owner accountable for uninhabitable conditions.[95] Indeed, the Uniform Law Commission even took note of this fact in 2015, by defining "transient occupancy" as:

> occupancy in a room or suite of rooms [in which] (A) the cost of occupancy is charged on a daily basis; (B) the operator of the room provides housekeeping and linen service as part of the regularly charged cost of occupancy; and (C) the occupancy does not exceed [30] consecutive days.[96]

Adoption of this statute would broadly move extended-stay motel arrangements within the confines of landlord-tenant law, even more than the statutes of analogous states.

However, Indiana still has weaker habitability protections than other jurisdictions, as it has not adopted a rent-withholding statute or common law equivalent.[97] Therefore, it is essential to examine public enforcement methods that would complement tenant-driven remedies to ensure habitable conditions.

III. PUBLIC ENFORCEMENT OF EXTENDED-STAY MOTEL RESIDENTS' HUMAN RIGHTS

Irrespective of whether extended-stay motel guests possess the rights of Indiana tenants, municipalities have extensive tools to curtail negligent motel owners, particularly in regulating public safety issues that owners often allow to proliferate. Unfortunately, municipal responses to negligently maintained or unsafe motels with extended-stay residents in Indiana have overwhelmingly been to try to close and vacate them. For example, in 2015, a judge upheld a court order closing down the Indianapolis-based King's Inn, which predominantly housed long-term, low-income residents.[98] Tenants were given three days' notice to move out and find alternative residences.[99] City prosecutors cited the preponderance of IMPD calls for service as a primary justification for shutting

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95. *See supra* Part II.

96. REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 103(a)(2), 7B U.L.A. 59 (2015).

97. *See* Florence Wagman Roisman, *Indiana Landlord-Tenant Law: An Important Step Forward in Theory Needs to Be Made Real in Practice*, 53 IND. L. REV. 317 (2020); *see also* Judith Fox, *The High Cost of Eviction: Struggling to Contain a Growing Social Problem*, 41 MITCHELL HAMLINE L. J. OF PUB. POL'Y & PRAC. 167 (2020).

98. Jeff Wagner, *Court Order Upheld, Troubled Hotel Must Close*, WISHTV (Mar. 26, 2015), https://www.wishtv.com/news/court-order-upheld-troubled-hotel-must-close/ [https://perma.cc/VLN3-H2PP].

99. *Id.*

down the building, and said they believed it was the only way to pursue accountability.[100] In another example, a judge successfully shuttered the Red Carpet Inn & Fanta Suites in Greenwood, Indiana by revoking its certificate of occupancy, despite the absence of a relocation plan for residents.[101] Finally, the Town of Plainfield initially sought demolition of the Ashley Motel before eventually pursuing a settlement agreement.[102]

This approach, while responding to immediate municipal pressure to address crime and public health hotspots, may harm extended-stay motel residents. Extended-stay motel residents, even when living in substandard housing, often report feeling a sense of home.[103] Further, hotels and motels can serve as a form of emergency shelter for communities by effectively expanding the capacity of local shelters.[104] Extended-stay motel arrangements can also be a crucial safety net for those fleeing domestic violence.[105] Finally, these arrangements can be an option for families who are otherwise unable to find suitable rental housing due to bad credit, criminal convictions, or inability to make a down payment.[106]

Given the social value of extended-stay motels, this Note examines other methods whereby local municipalities can protect the human rights of extended-stay motel guests other than condemnation of buildings or permit revocation. Looking at Indiana's public habitability enforcement systems produces a fractured picture consisting of a variety of local agencies and governmental bodies. Indiana municipalities are equipped with four remedies to try to bring substandard housing into compliance with public safety law: (A) public nuisance law, (B) the Unsafe Building Law, and (C) local health departments. These systems, while effective in some contexts, all have inherent weaknesses, and some have been weakened in recent years.

A. Injurious, Indecent, and Offensive: Using Public Nuisance Law to Protect Extended-Stay Motel Residents

Public nuisance lawsuits have been increasingly used to address large-scale, public health-related problems like the opioid epidemic, lead paint contamination,

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100. *Id.*

101. WTHR.com staff, *Judge Orders Occupants out of Red Carpet Inn & Fanta Suites Greenwood*, 13 WTHR (Dec. 28, 2022), https://www.wthr.com/article/news/local/judge-orders-fanta-suites-greenwood-indiana-hotel-ordered-to-close/531-02106176-101b-4296-8673-348b69d245db [https://perma.cc/CXF9-CGGQ].

102. *Complaint*, *supra* note 1, at 1.

103. Wingate-Lewinson et al., *supra* note 22, at 13.

104. Charlene K. Baker et al., *Domestic Violence, Housing Instability, and Homelessness: A Review of Housing Policies and Program Practices for Meeting the Needs of Survivors*, 15 AGGRESSION & VIOLENT BEHAV. 430, 432 (2010).

105. *Id.*

106. *See* Wingate-Lewinson et al., *supra* note 22, at 11-12, 18, 20; NORCROSS, *supra* note 21, at 48.

and firearm crimes.[107] Indiana statutes codify a nuisance as anything that is "injurious to health[,] indecent[,] offensive to the senses[,] or an obstruction to the free use of property[,] so as essentially to interfere with the comfortable enjoyment of life or property."[108] Under Indiana statute, the attorney of a city or town is authorized to bring a nuisance claim.[109] Indeed, public nuisance was the legal basis for Plainfield taking action against the Ashley Motel.[110]

Indianapolis has utilized public nuisance suits to try to compel changes in management practices for both apartment complexes and businesses with disproportionate calls to law enforcement.[111] However, in recent years, the public nuisance doctrine hit a wall. In 2017, the Indiana General Assembly passed Senate Enrolled Act 558, which in part provided that:

> (d) . . . a political subdivision may not adopt or enforce any ordinance, rule or regulation that imposes a penalty, or allows for the imposition of a penalty, against a tenant, an *owner*, or a landlord for a *contact made to request law enforcement assistance or other emergency assistance* for one (1) or more *rental units* if:
>
> (1) the contact is made by or on behalf of:
>
> (A) a victim or potential victim of abuse;
>
> (B) a victim or potential victim of a crime; or
>
> (C) an individual in an emergency; and
>
> (2) either of the following applies:
>
> (A) At the time the contact is made, the person making the contact reasonably believes that law enforcement assistance or other emergency assistance is necessary to prevent the perpetration or escalation of abuse, a crime, or an emergency.
>
> (B) If abuse, a crime, or an emergency occurs, the law enforcement assistance or other emergency assistance was needed.[112]

The statute also provided that "[n]othing in this section shall be construed to prevent an attorney representing a city, county, or town from bringing a nuisance

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107. Anthony Juzaitis, *Analysis: The Public Nuisance Doctrine Is Having a Moment*, BLOOMBERG L. (Nov. 4, 2019, 6:04 AM), https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-the-public-nuisance-doctrine-is-having-a-moment [https://perma.cc/AUL8-EDMF].

108. IND. CODE § 32-30-6-6 (2022).

109. *Id.* § 32-30-6-7(b).

110. *Complaint*, *supra* note 1, at 1.

111. Jeff Swiatek & Justin L. Mack, *Problem Properties Meet Match: Nuisance Suits*, INDIANAPOLIS STAR (Sept. 29, 2015), https://www.indystar.com/story/money/2015/09/10/public-nuisance-lawsuits/72025848/ [https://perma.cc/W7Z6-MR8V].

112. § 32-31-1-22(d) (emphasis added).

action described under IC 32-30-6-7(b)."[113] However, a court's subsequent interpretation of this statute negatively affected municipalities' ability to address substandard rental properties.

In *City of Indianapolis v. Towne & Terrace Corp.*, Indianapolis officials attempted to bring a public nuisance suit against Towne & Terrace Corporation, a problematic housing complex that was the source of a disproportionate share of calls to law enforcement.[114] The Indiana Court of Appeals concluded that Indiana Code section 32-31-1-22(d) precluded the lawsuit because the city could not use disproportionate law enforcement calls originating from the complex to impose a penalty like damages from a public nuisance lawsuit.[115] This ruling opened the door to an inquiry of what could constitute "other emergency assistance" for the purposes of Indiana Code section 32-31-1-22(d).[116] Many habitability issues affect extended-stay motel guests' health and safety so imminently that they could be construed as emergencies.[117] Read expansively, this ruling could also encompass calls to a health department to report lead paint, mold, a lack of running water, the malfunction of essential appliances, or vermin infestations.[118]

While *Towne & Terrace*'s holding immediately pertains to rental units and traditional landlord-tenant arrangements, Indiana Code section 32-31-1-22(d) applies to "owners" as well as landlords, and tenants.[119] Therefore, motel owners, regardless of whether they are "landlords" under Indiana law, can likely avail themselves of the protections outlined in *Towne & Terrace*. Following the *Towne & Terrace* ruling, municipalities are unsure of what constitutes "other emergency assistance" and are unclear as to their current powers under nuisance law.[120] In fact, Indianapolis is considering hiring outside counsel to put forth a test case of the public nuisance doctrine.[121] Hopefully, this intended test case will clarify which evidence municipalities may use in public nuisance suits; however, this process could easily take years.

In the meantime, municipalities should consider adopting policies to

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113. *Id.* § 32-31-1-22(h).

114. City of Indianapolis v. Towne & Terrace Corp., 106 N.E.3d 507, 509 (Ind. Ct. App. 2018).

115. *Id.* at 512.

116. Taylor Wooten, *City Considering Outside Counsel to Test Public Nuisance Law*, INDIANAPOLIS BUS. J. (Nov. 4, 2022), https://www.ibj.com/articles/city-weighing-outside-counsel-to-test-public-nuisance-law?utm_source=ibj-daily&utm_medium=newsletter&utm_campaign=2022-11-04 [https://perma.cc/KTH9-98L2].

117. *Complaint*, *supra* note 1, at 5-7.

118. *Id.*

119. Ind. Code § 32-31-1-22(d) (2022).

120. Ko Lyn Cheang, *Indianapolis Threatens to Sue Lakeside Pointe at Nora Owner for Nuisance*, INDIANAPOLIS STAR (Jan. 25, 2022), https://www.indystar.com/story/news/real-estate/2022/01/25/indianapolis-threatens-sue-lakeside-pointe-owner-nuisance/9204782002/ [https://perma.cc/CT74-AW3Z] ("Deputy Mayor Jeff Bennett said that this 'test case' will help clarify existing discrepancies and a lack of clarity within state law on this question, and help the city in the long term to hold other bad actors landlords accountable.").

121. Wooten, *supra* note 116.

incentivize security for extended-stay motels. For example, the Indianapolis City-County Council recently approved a proposal whereby it could require hotels and motels that had too many calls for emergency services to require additional security personnel.[122] The ordinance specifically provides that if a hotel or motel exceeds 2.5 calls for service per room for at least two years, the Department of Business and Neighborhood Services may act to require additional security personnel, among other rights.[123]

B. The Unsafe Building Law and Indiana Code Enforcement Agencies

The Unsafe Building Law is the most comprehensive code enforcement law provided to Indiana municipalities, allowing for both sanction and abatement powers.[124] Its powers could be used expansively to hold negligent motel owners maintaining uninhabitable conditions accountable.

In 1973, Indianapolis's Department of Code Enforcement (now the Department of Business and Neighborhood Services), facing an insurmountable burden of unsafe houses, drafted an expansive code enforcement law, which was subsequently adopted by the General Assembly with Public Law 181-1973.[125] The statute was amended over the ensuing years, and eventually became known as the "Unsafe Building Law."[126] The legislative findings of the Indiana General Assembly in the Unsafe Building Law indicate it was passed predominantly to counter abandoned and blighted buildings in Indiana communities.[127]

Even though the original conception of the Unsafe Building Law was to combat vacant and abandoned housing, the law is written broadly enough to address not only unoccupied housing, but also motels, and can therefore be a powerful tool to address the habitability issues suffered by extended-stay motel residents.[128] The Unsafe Building Law applies automatically to first-class cities (i.e., the consolidated Indianapolis-Marion County government), but also applies to any city that adopts it via local ordinance.[129]

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122. Emily Longnecker, *Council Approves Proposal to Revoke Licenses of Hotels with Too Many Emergency Runs*, 13 WTHR (Mar. 14, 2018), https://www.wthr.com/article/news/crime/council-approves-proposal-to-revoke-licenses-of-hotels-with-too-many-emergency-runs/531-22483ae2-1c4d-4592-b2de-14ed21073e03 [https://perma.cc/GV86-UVPT]; INDIANAPOLIS/MARION CNTY., IND., REV. CODE OF ORDINANCES §§ 901-204 through -205, -304 (2022).

123. §§ 901-204 through -205, -304.

124. IND. CODE § 36-7-9 (2022).

125. ABANDONED HOUSES WORK GRP., RECLAIMING ABANDONED PROPERTY IN INDIANAPOLIS 5-6 (2004), https://xmaps.indy.gov/ODP/Download/DMD/Zoning/2004-ReclaimingAbandonedProperty.pdf [https://perma.cc/EWP2-7794].

126. *Id.* at 8.

127. § 36-7-9-4.5(k) ("In recognition of the problems created in a community by vacant structures, the general assembly finds that vigorous and disciplined action should be taken to ensure the proper maintenance and repair of vacant structures[.]").

128. *See generally id.* § 36-7-9-4.

129. *See* City of Charlestown v. Charlestown Pleasant Ridge Neighborhood Ass'n, 111 N.E.3d

The Unsafe Building Law features both a "sanction" track[130] and an "abatement" track,[131] however, both begin from the same set of powers. If a municipality uses the sanction track, the enforcement authority is the department authorized to administer the Unsafe Building Law,[132] typically delegated by ordinance,[133] except in a consolidated city. Once the Enforcement Authority identifies a property as "unsafe," they may take a variety of actions, including, pertinently:

> (1) vacating of an unsafe building;
> (2) sealing an unsafe building against intrusion by unauthorized persons, in accordance with a uniform standard established by ordinance;
> (3) extermination of vermin in and about the unsafe premises;
> (4) removal of trash, debris, fire hazardous material, or a public health hazard in and about the unsafe premises;
> (5) repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use by a statute, a rule adopted under IC 4-22-2, or an ordinance.[134]

If issued an order from the Enforcement Authority, unless a person with an interest in the property requests a hearing, after ten days, any order—except the vacating, demolition, or sealing of an unsafe building for more than ninety days—becomes final.[135] For those orders, a hearing is required regardless.[136] Following noncompliance with an order, the hearing authority may impose a penalty of up to $2,500.[137] If noncompliance continues, the enforcement authority can subsequently impose additional civil penalties of up to $1,000 every 90 days.[138]

Conversely, municipalities utilizing the Unsafe Building Law also have the option of using the abatement track. Following noncompliance with an order, with proper service, and a hearing (if required or requested), the enforcement authority can hire personnel to perform enforcement activities, then bill the owner to recoup the costs.[139] Crucially, if payment is not made thirty days after charging,

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199, 201 (Ind. Ct. App. 2018).

130. § 36-7-9-5(a).

131. *Id.* § 36-7-9-11.

132. *Id.* § 36-7-9-2(4)

133. *See, e.g.*, SOUTH BEND, IND., MUN. CODE, art. 8, § 6-37.1(d) (2022) (designating Department of Code Enforcement as the "Enforcement Authority").

134. IND. CODE § 36-7-9-5(a) (2022).

135. *Id.* § 36-7-9-7(a).

136. *Id.*

137. *Id.* § 36-7-9-7.5(b).

138. *Id.* § 36-7-9-7.5(c).

139. *Id.* § 36-7-9-11.

the bill is placed as a special assessment on the owner's tax burden.[140] However, there are still more aggressive remedies supplied by the Unsafe Building Law. The Unsafe Building Law has two avenues for receivership; one initially requires a declaration of abandonment, whereby a receiver may, at the order of the court, take control of the property to rehabilitate it.[141]

Despite granting municipalities power, the Unsafe Building Law also has a preemptive effect on other forms of municipal code enforcement. In 2016, the City of Charlestown attempted to redevelop a stretch of land known as the Pleasant Ridge.[142] The city attempted to utilize its own municipal Property Maintenance Code, which differed from the Unsafe Building Law in its notice requirements and potential sanctions for noncompliance.[143] The affected homeowners attempted to challenge the law, arguing, in part, that they could not enforce the Property Maintenance Code separately from the Unsafe Building Law.[144] The Indiana Court of Appeals noted that the Home Rule Act provides that "'[i]f there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner.'"[145] Therefore, the City of Charlestown was only allowed to enforce its Property Maintenance Code "within the confines and strictures" of the Unsafe Building Law.[146] This indicates that while the Unsafe Building Law delegates power, it also restricts municipalities exclusively to its structure upon adoption.

The Unsafe Building Law allows municipal code enforcement agencies to target two categories of property: "unsafe" property and "abandoned" property.[147] Unsafe properties can include properties that are "a hazard to the public health"; "a public nuisance"; "dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance"; or "vacant or blighted . . . in a manner that would [not] allow human habitation, occupancy, or use under . . . a statute or an ordinance."[148] A crucial and unanswered question, pertinent to code enforcement agencies, is just how "unsafe" a hotel or motel must be before they can act under the Unsafe Building Law.

The Indiana Court of Appeals has weighed in on this question, first in

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140. *Id.* § 36-7-9-13.5(c), (d).

141. MATTHEW KREIS, CTR. FOR COMM. PROGRESS, VACANCY AND ABANDONMENT IN THE CITY OF INDIANAPOLIS, INDIANA 26 (2016), https://communityprogress.org/wp-content/uploads/2021/08/2016-05-Vacancy-and-Abandonment-in-the-City-of-Indianapolis-Indiana-TA-Report.pdf [https://perma.cc/T7TP-75MQ].

142. City of Charlestown v. Charlestown Pleasant Ridge Neighborhood Ass'n, 111 N.E.3d 199, 202 (Ind. Ct. App. 2018).

143. *Id.*

144. *Id.* at 203.

145. *Id.* at 207 (citing IND. CODE § 36-1-3-6 (2022)).

146. *Id.*

147. KREIS, *supra* note 141, at 14, 20-21 (citing IND. CODE § 36-9-7-4 (2022), which defines "unsafe" pursuant to the Unsafe Building Law, and IND. CODE § 32-30-10.6-5 (2022) which defines "abandoned" pursuant to the Unsafe Building Law).

148. IND. CODE § 36-9-7-4(a) (2022).

Foursquare Tabernacle Church of God in Christ v. Department of Metropolitan Development, concluding that repairs ordered must be reasonably related to present unsafe conditions.[149] In *Foursquare*, the Indianapolis Department of Metropolitan Development sought injunctive relief to order Tabernacle Church of God in Christ to make a number of repairs, which the enforcement authority ordered.[150] Foursquare Tabernacle Church of God in Christ protested that these repair orders were outside the Department's mandate under the Unsafe Building Law.[151] The court analyzed the repair orders in three groups: (1) "[w]eathertighting siding, roofs, and foundations," (2) "[r]epairing or installing gutters and soffits," and (3) "[r]epairing chimneys, flues, and vents to a functional condition."[152] The court concluded that the first two repair groups, weathertighting and repairing gutters, were authorized by the Unsafe Building Law; however, the court concluded that chimneys, flues, and vents could only be made "safe," meaning weathertight and secure, but not "functional."[153]

Similarly, in *City of Charlestown v. Charlestown Pleasant Ridge Neighborhood Association*, the Indiana Court of Appeals noted in dicta that the Unsafe Building Law provision that allows municipalities to regulate buildings that are "dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance" does not enumerate building standards.[154] The court concluded that the plain text allowed local governments to supplement the definition of "dangerous" by passing ordinances establishing health and safety standards for rental properties.[155] This indicates that as long as local housing codes are reasonably related to preserving health, Indiana municipalities can address them using the Unsafe Building Law.

Caselaw analyzing the Unsafe Building Law indicates that the meaning of "unsafe" is sufficiently broad to address most code enforcement issues and can theoretically be broadened by municipalities interested in establishing robust health and safety housing codes. However, municipalities may not use the Unsafe Building Law to engage in proactive code enforcement.

C. Local Health Departments

Local Health Departments under Indiana law have similar, but not identical,

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149. Foursquare Tabernacle Church of God in Christ v. Dep't of Metro. Dev. of Indianapolis, 630 N.E.2d 1381, 1389 (Ind. Ct. App. 1994).

150. *Id.* at 1383.

151. *Id.* at 1384.

152. *Id.* at 1388-89.

153. *Id.*

154. City of Charlestown v. Charlestown Pleasant Ridge Neighborhood Ass'n, 111 N.E.3d 199, 205 (Ind. Ct. App. 2018) (citing definition of "unsafe" building in Unsafe Building Law, located in IND. CODE § 36-7-9-4 (2022)).

155. *Id.* at 206 ("[p]ursuant to the UBL's plain terms, a violation of the PMC safety standards that renders a building dangerous to a person or property is an unsafe building to which the UBL applies").

powers to order the remediation of substandard rental housing.[156] However, these powers are generally constrained to a few relevant areas directly affecting health.[157] In Marion County, where Indianapolis is located, the Health Department takes on a primary role in addressing substandard rental housing.[158] Unlike municipalities administering the Unsafe Building Law, Local Health Departments are almost exclusively—with the exception of the cities of East Chicago, Gary, and Fishers—administered at the county level.[159] Local Health Departments are authorized to conduct a variety of actions to ensure that housing is safe and sanitary, including declaring a property a public nuisance and ordering the nuisance's abatement.[160] Additionally, Local Health Departments can order a building to be cleaned,[161] or vacated altogether in severe cases.[162] Local Health Departments have the power to order what is "reasonably necessary . . . for the prevention and suppression of disease."[163]

Local Health Departments often utilize these powers to address important elements of substandard rental housing. Local Health Departments have authorization under Indiana statute to remediate lead-based paint in rental housing; indeed, for example, in 2004 the Vigo County Health Department declared a rental property unfit for human habitation and prevented its sale.[164] Additionally, Local Health Departments often facilitate the remediation of mold-infested rental dwellings, with their implementation of the state-wide Indoor Air Quality program, where the Indiana Department of Health provides technical assistance to Local Health Departments, including air quality tests.[165] However, outside of rules governing air quality in schools and state agencies,[166] there are no laws on the books governing indoor air quality in Indiana.[167]

Marion County, while ostensibly having a health department like all other counties, has a distinct municipal corporation with a public health division that

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156. IND. CODE § 16-41-20 (2022).

157. *Id.*

158. *Housing and Neighborhood Health*, MARION CNTY. PUB. HEALTH DEP'T, https://marionhealth.org/programs/environmental-health/housing-and-neighborhood-health/ [https://perma.cc/K2VS-7WHK] (last visited Feb. 25, 2024).

159. *Maps and Contacts*, IND. DEPT. OF HEALTH, https://www.in.gov/health/lhd/local-health-department-map/ [https://perma.cc/8XXD-P33H] (last visited Jan. 10, 2024) (see Lake County and Hamilton County on the map).

160. § 16-41-20-6.

161. *Id.* § 16-41-20-7.

162. *Id.* § 16-41-20-4.

163. *Id.* § 16-20-1-23.

164. JANET G. MCCABE, LEAD-BASED PAINT: THE LAW IN INDIANA 17 (2006), https://www.co.delaware.in.us/egov/documents/1187214552_637451.pdf [https://perma.cc/B8FU-YK36].

165. *Indoor Air Quality*, IND. DEP'T OF HEALTH (2022), https://www.in.gov/health/eph/indoor-air-quality/ [https://perma.cc/H2SS-FGUF].

166. *See* 410 IND. ADMIN. CODE 33-1-1 through 33-7-1.

167. *Indoor Air Quality*, *supra* note 165.

carries out the duties and powers of any other county's health department.[168] Like other municipalities, the Indianapolis-Marion County consolidated government—and specifically the Department of Metropolitan Development—has the power to apply the Unsafe Building Law.[169] However, by statute, Indiana also has the Health and Hospital Corporation, whose Division of Public Health is equipped with all the "powers and duties conferred by law upon local departments of health."[170]As a result, there are effectively two code enforcement agencies that operate in Indianapolis with concurrent jurisdiction.

The Marion County Public Health Department, a subsidiary of the Health and Hospital Corporation, enforces minimum building standards for occupied commercial and residential buildings.[171] Conversely, the Department of Business and Neighborhood Services addresses abandoned buildings.[172] Unfortunately, unlike the Unsafe Building Law, the Health and Hospital Corporation's Public Health Code does not allow for unpaid code enforcement liens to become a special judgment on a tax bill.[173] Further, the Marion County Health and Hospital Corporation's code, while allowing abatement actions,[174] does not allow for the receivership powers provided under the Unsafe Building Law.

Further, the dual jurisdiction of the Department of Business and Neighborhood Services and the Marion County Public Health Department significantly complicates code enforcement. The existence of both the Marion County Public Health Department and the Department of Business and Neighborhood Services creates confusion for Indiana tenants, many of whom still call the Department of Business and Neighborhood Services to report code violations.[175] The bifurcated nature of these enforcement mechanisms significantly delayed legislative progress last year. Senate Bill 230, a 2022 bill that attempted to grant Indiana tenants the right to repair rental defects and then deduct those costs from rent was relegated to a summer study session largely due to jurisdictional issues between the Health and Hospital Corporation and the Department of Business and Neighborhood Services.[176] The unintended consequences of the two agencies created "jurisdictional confusion" on which department could address "claims of neglect."[177]

However, there is an even more detrimental unintended consequence, which

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168. IND. CODE § 16-22-8-28(b) (2022).

169. *Id.* § 36-7-9-2.

170. *Id.* § 16-22-8-28(b).

171. KREIS, *supra* note 141, at 25.

172. *Id.* at 21-22.

173. *Id.* at 26.

174. Code of the Health and Hospital Corporation of Marion County, Ch. 21: Enforcement Procedures and Administrative Hearings, art. 5, § 21-501 (2006).

175. KREIS, *supra* note 141, at 22.

176. Matt Nowlin et al., *The State of Tenants in Central Indiana*, SAVI (May 26, 2022), https://www.savi.org/2022/05/26/the-state-of-tenants-in-central-indiana/ [https://perma.cc/S2BR-WU7U].

177. *Id.*

negatively affects the interests of both Indianapolis' code enforcement agencies—and any prospective extended-stay motel residents seeking relief. Because the Marion County Public Health Department, like all Local Health Departments under Indiana law, gains powers to remediate housing issues when there is a health hazard, a tenant leaving mid-case causes enforcement issues.[178] A tenant vacating the apartment removes the active health hazard, effectively causing the Marion County Health and Hospital Corporation to lose jurisdiction when bringing cases investigated by the Marion County Public Health Department into court for enforcement.[179] In 2021, the Marion County Health and Hospital Corporation had to drop cases against noncompliant residential owners due to a unit becoming unoccupied 126 times, or about one-tenth of the cases brought into court.[180] This finding is particularly problematic for extended-stay motel residents, given many are actively looking to leave, and any claim could be dropped if they were to vacate the room.

In sum, the existence of Local Health Departments creates additional agencies alongside other code enforcement agencies using the Unsafe Building Law which can address substandard housing in motels. However, the statutory organization of Local Health Departments, particularly in Marion County, creates unintended jurisdictional complications, where extended-stay motel residents' housing conditions remain in danger of being left unaddressed.

D. Recommendations: Strategies to Use Municipal Power to Protect Extended-Stay Motel Residents

Indiana legislators should prioritize policy changes to promote proactive rental inspection methods, which do not utilize punitive methods to bring landlords into compliance. Additionally, given the urgency of the safety and habitability issues faced by extended-stay motel guests, municipalities should robustly and expediently use existing mechanisms, particularly abatement and receivership under the Unsafe Building Law.

1. Prioritize the Expeditious Remediation of Uninhabitable Motel Dwellings.—One policy priority that would positively impact extended-stay motel residents would be to maximize the expeditious use of nuisance powers (when possible) and the Unsafe Building Law to bring remedies to those suffering from habitability violations as quickly as possible. As noted by the Indiana Court of Appeals in *Charlestown Pleasant Ridge Neighborhood Association*, the powers of the Unsafe Building Law are largely permissive.[181] This gives code

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178. JACOB PURCELL, HEALTH & HUM. RTS. CLINIC, IND. UNIV. ROBERT H. MCKINNEY SCH. OF L., A DECENT PLACE TO LIVE: IMPROVING INDIANA'S PUBLIC AND PRIVATE HABITABILITY ENFORCEMENT MECHANISMS 35 (2022), https://mckinneylaw.iu.edu/practice/clinics/_docs/DecentPlacetoLive-20123.pdf [https://perma.cc/CKT4-T9C7].

179. *Id.*

180. *Id.*

181. City of Charlestown v. Charlestown Pleasant Ridge Neighborhood Ass'n, 111 N.E.3d 199, 206 (Ind. Ct. App. 2018) (referencing IND. CODE § 36-7-9-5 (2022)).

enforcement agencies discretion to pursue different levels of sanctions against different calibers of habitability violators.[182] Orders for a property owner to fix their property under the Unsafe Building Law are required to give them a "sufficient time" of ten to sixty days to make repairs before a fine is imposed.[183] Theoretically, under this arrangement, code enforcement departments could push for a ten-day requirement for serious habitability violations that do not meet the threshold for emergency violations.

For example, the Indiana Court of Appeals in *Starzenski v. City of Elkhart* held that additional notice was not required other than the order from the hearing authority to execute abatement actions.[184] In the case, the City of Elkhart was attempting to compel the cleaning of the Starzenski's property, which was inundated with trash.[185] The Enforcement Authority, after notice, conducted a hearing on July 24, 1991, in which it determined the property was unsafe, and ordered the "junk and debris" be removed within thirty days, after which the city would be authorized to enter the property and take required action.[186] After continued noncompliance and no action in the thirty-day period, the hearing authority issued another order entitled, "Notice—Order to Take Action," which warned, "if you do not comply with this order, the City of Elkhart, through its Building Department, may enter the premises and carry out the action required by the order and charge you for the costs of said clean up."[187] The Starzenskis still did not comply for an extended period, and after subsequent hearings, and subsequent orders to clean the property, the city finally took action in February of 1993, entering and cleaning the property after giving four days' written notice.[188] The Starzenskis objected, in part claiming that neither the Enforcement Authority nor the Hearing Authority had the constitutional power to allow the City to enter their property; however, the court concluded that there was ample time and notice to protect constitutional rights.[189]

Even though the city of Elkhart opted not to intervene for a substantial time period, it would be completely permissible under *Starzenski* to (1) provide a landlord in violation of the Unsafe Building Law notice of a hearing, (2) issue a ten-day period for remediating the condition, and then if not complied with, (3) send notice of the intent to enter the premises, and then (4) enter the premises and take necessary action to remediate the habitability violation.

Indiana municipalities can look to *Starzenski* to find sufficient clarity that an expedited timeline for implementing the Unsafe Building Law is possible. When habitability violations do arise in Indiana motels, even given the recently curtailed nuisance powers, Indiana case law definitively shows that municipalities have a

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182. *Id.*

183. IND. CODE §§ 36-7-9-5(b) through (c) (2022).

184. Starzenski v. City of Elkhart, 659 N.E.2d 1132, 1137 (Ind. Ct. App. 1996).

185. *Id.* at 1135.

186. *Id.* (internal quotations omitted).

187. *Id.*

188. *Id.* at 1135-36.

189. *Id.* at 1138-39.

clear mandate to act to preserve the rights of extended-stay motel residents.

2. Promote Proactive Rental Inspection Programs.—As previously noted, Indiana policies heavily favor reactive code enforcement methods; however, these are not ideal to conduct comprehensive code enforcement. Proactive rental inspection (PRI) programs involve periodic inspections, which take place at either designated intervals (e.g. every three years), or a change in tenancy.[190] Proactive rental inspection programs yield more equitable outcomes than purely complaint-based systems.[191] More affluent tenants are more likely to call health inspectors, resulting in profound disparities in the effectiveness of reactive code enforcement systems.[192] This leaves low-income neighborhoods with inadequate code enforcement, creating a disproportionate impact on Black families.[193] This is a particularly troubling trend, as Black families are 1.7 times more likely to live in substandard housing.[194] Further, residents like those at the Ashley Motel, given their unclear standing and rights under Indiana law, are particularly vulnerable to retaliation as a result of complaints to authorities. Proactive rental inspection programs level the playing field by establishing uniform inspections corresponding to actual need, as opposed to reporting.[195] However, as previously discussed, Indiana law does not adequately provide municipalities with a statutory framework needed to ensure effective proactive code enforcement.[196]

Nevertheless, municipalities can still enact robust proactive code enforcement regimes with what little power they still possess. Most prominently, South Bend established its Rental Safety Verification Program (RSVP), with its ordinance passing unanimously in the South Bend Common Council on February 25, 2019.[197] The RSVP program requires that all units in South Bend "that are intended to be occupied or are occupied by anyone other than the owner" be inspected to ensure they meet the minimum standards established by the International Property Maintenance Code, which South Bend adopted.[198]

The ordinance itself deftly evades the preemptive limitations put on Indiana municipalities' code enforcement by Indiana law.[199] Instead of saying outright

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190. AMY ACKERMAN ET AL., CHANGELAB SOLS., A GUIDE TO PROACTIVE RENTAL INSPECTION PROGRAMS 4 (2014), https://www.changelabsolutions.org/sites/default/files/Proactive-Rental-Inspection-Programs_Guide_FINAL_20140204.pdf [https://perma.cc/QR6V-46QR].

191. *Id.* at 6.

192. Marilyn L. Uzdavines, *Barking Dogs: Code Enforcement Is All Bark and No Bite (Unless the Inspectors Have Assault Rifles)*, 54 WASHBURN L.J. 161, 164 (2015).

193. Elizabeth Tobin Tyler, *Black Mothers Matter: The Social, Political and Legal Determinants of Black Maternal Health Across the Lifespan*, 25 J. HEALTH CARE L. & POL'Y 49, 82 (2022).

194. *Id.* at 78.

195. ACKERMAN ET AL., *supra* note 190, at 6.

196. *See supra* Part II (discussion of Indiana's Unsafe Building Law, its inapplicability to proactive code enforcement, and the *City of Charlestown* case).

197. Fox, *supra* note 97, at 184.

198. SOUTH BEND, IND., MUN. CODE § 6-79(a) (2022).

199. *See, e.g.*, SENATE ENROLLED ACT 148, S. 121-148, 2d Sess. (Ind. 2020) (establishing that

that landlords must submit to an inspection, the RSVP merely establishes a penalty structure that can be enforced against landlords for failing to cooperate.[200] The program does not establish a fee for either the initial inspection or the first re-inspection.[201] However, if noncompliance with the International Property Maintenance Code continues, and there is a second re-inspection, the fee is $100.00, which doubles for each re-inspection thereafter.[202] Finally, the most important penalty motivating landlords is a $250.00 fee per week for each week that a unit has not been inspected.[203]

While the structure of South Bend's RSVP ordinance suffers from inevitable weaknesses as a result of the Indiana General Assembly's effective ban on landlord licensure, it provides an exemplary model that other Indiana municipalities can emulate. Other Indiana municipalities, in response to Indiana's highly publicized struggle with uninhabitable rental housing, are moving to establish inspection programs. For example, even a city as small as Clarksville, Indiana is planning on implementing a rental inspection program.[204] This leaves no doubt that similar programs targeting exclusively the unique class of extended-stay hotels and motels could be devised and executed by Indiana municipalities.

However, the rollout of the RSVP is also of note, and serves as a cautionary tale for municipalities interested in systemically addressing substandard rental housing. The program began by addressing rental properties that were already problematic.[205] In the interim, the RSVP uncovered that many tenants were already living in uninhabitable homes, with some even living in units issued "vacate and seal demolition orders before they were rented out."[206] Therefore, the City of South Bend, Notre Dame Legal Aid Clinic, and St. Vincent DePaul joined forces to create an emergency response team that referred those displaced in the implementation of the RSVP program.[207] Municipalities seeking to implement proactive rental inspection models which encompass hotels and motels should allocate sufficient resources to accommodate the potential displacement of extended-stay motel residents.

CONCLUSION

As the human rights violations at the Ashley Motel readily demonstrate, extended-stay motel residents have a set of unique monetary and social challenges

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municipalities cannot regulate most aspects of the landlord-tenant relationship).

200. SOUTH BEND, IND., MUN. CODE § 6-86 (2022).

201. *Id.* § 6-86(a).

202. *Id.* § 6-86(b).

203. *Id.* § 6-86(d)(1).

204. Libby Cunningham, *Clarksville Moves Forward on Rental Inspection Program*, NEWS & TRIBUNE (Nov. 11, 2022), https://www.newsandtribune.com/news/clarksville-moves-forward-on-rental-inspection-program/article [https://perma.cc/4CNS-NLV9].

205. Fox, *supra* note 96, at 184.

206. *Id.*

207. *Id.*

that make them vulnerable to exploitation on the part of negligent and abusive motel owners. The solution to this problem must be two-fold, by both empowering extended-stay motel residents by ensuring they possess the same rights as tenants under the law and promoting comprehensive public enforcement of habitable conditions to remediate the properties.

First, this Note examined whether Indiana's extended-stay motel residents currently fall into the "transient occupancy" exception laid out in Indiana Code section 32-31-2.9-4, concluding that the answer is very unclear under Indiana law, and will depend on the mode of interpretation adopted by Indiana courts. The Indiana Code provides little guidance as to the meaning of "transient," and other modes of analysis adopted by other states' highest courts analyzing similar statutes also adopted from the URLTA section 1.202 still suffer from similar ambiguity problems. Therefore, this Note recommended the Indiana General Assembly act to enact a clear standard, preferably measured in days, as to when, over the course of continued residence, a motel guest can gain the rights of Indiana tenants.

Second, this Note examined the legal framework provided to Indiana municipalities to combat negligent and abusive motel owners and assure the safety of extended stay guests. This Note concluded that there are three existing major areas of Indiana law that control the majority of public, municipal responses to rental habitability issues, including: (1) public nuisance law, (2) the Unsafe Building Law, and (3) Local Health Departments. The Indiana General Assembly has recently weakened public nuisance lawsuits considerably. The Unsafe Building Law contains powerful remedies but is crucially missing the ability to proactively address rental conditions. Finally, the Health and Hospital Corporation in Marion County occupies concurrent jurisdiction with the Department of Business and Neighborhood Services, creating inefficiencies and gaps, particularly for extended-stay motel residents.

This Note recommends that the Indiana General Assembly consider policies that would promote municipalities' use of proactive rental inspection to address negligently maintained motels. These policies include increasing funding sources to code enforcement agencies, promoting registration systems, and allowing municipalities to mandate inspections and habitable conditions as a condition of registration. Further, this Note recommends utilizing the current framework of the Unsafe Building Law's receivership provisions to aggressively target motels that fail to uphold habitable conditions.