



nerej

Massachusetts shelter hotels - by Joshua Bowman

September 22, 2023 - Front Section



Joshua Bowman

Massachusetts has long been at the vanguard when it comes to protecting the most vulnerable members of its population. Massachusetts led the American Revolution, has the oldest functioning written constitution in the world, and was the first state to legalize gay marriage and enact universal healthcare. Therefore, it should not be surprising that in 1983 Massachusetts became the first (and still only) state in the country to enact a “right to shelter” law, which guarantees shelter and subsistence to homeless families, pregnant women, and, most recently, a large influx of migrant families.

There was a desperate need for emergency housing in the 1980s, due to the rampant crack cocaine epidemic, and “deinstitutionalization” – a process of closing state mental hospitals. Both trends caused an increase in homelessness. Due to a shortage of state operated emergency shelters, the Commonwealth looked to outside vendors, including hotel owners, to provide (now legally mandated) emergency shelter.

Housing families in hotels has rarely been popular. As former governor Charlie Baker recently said, “Many of them are located on busy streets. The parking lot is about as close as you get to open space. There’s no kitchen. It’s just not right for families.” On the other hand, when compared with a congregant style shelter, which is the dominant approach to homeless services in the US, a hotel room is arguably the better option. In congregant settings, occupants are constantly afraid, due to a lack of privacy and a limited feeling of safety. Theft is rampant. Such factors lead to acute physical and mental health problems, including extreme insomnia, many of which markedly improve when an occupant is moved to a safe and private hotel room, often with its own bathroom. So, while some politicians might find them objectionable, many doctors, social workers, and housing advocacy groups champion shelter hotels.

Nevertheless, since 1983, many governors have tried to curtail the program. Governor Weld (who governed from 1990 to 1997), largely eliminated the use of shelter hotels. But by 2003, hundreds of families were back in hotels. Governor Mitt Romney (who governed from 2003 to 2007) also tried to eliminate the program, but by 2012, approximately 200 families were again being sheltered in hotels. As of 2014, the number of families sheltering in hotels reached 1,500.

The most recent effort to curtail the program was led by governor Charlie Baker (who governed from 2015 until 2023). Not only did Baker personally abhor shelter hotels, but he also had serious fiscal concerns about them, as, when he took office, the program was costing the Commonwealth \$50 million per year. Baker proposed investment in affordable housing, including approximately \$1 billion of American Rescue Act funds. While the legislature approved less than half that amount, as of November of 2021, according to the Department of Housing and Community Development, there were only five families sheltering in hotels in Massachusetts.

But all of that changed when the Biden administration started easing COVID-19 travel restrictions in late 2021. By the following May, migrants were again allowed to immediately apply for asylum upon entering the US, and in May of 2023, the last of the COVID-19 restrictions expired. Since then,

immigration has surged, overwhelming shelters across the country. Massachusetts proved to be an especially attractive destination, due to its strong social safety net, word of which had spread through social media platforms like TikTok.

As of August of 2023, there were 5,600 families living in state funded shelters in Massachusetts (including the Joint Base Cape Cod Military Base) at a cost of \$45 million per month. Of such families, approximately 1,737 were housed in 43 hotels, located in 38 municipalities, according to the Executive Office of Housing and Livable Communities. Such numbers represent a 40% increase since late 2022.

This led governor Healey, on August 8, 2023, to declare a state of emergency and ask the federal government for help. Many migrants have marketable job skills but cannot work due to lack of a federal work permit. The federal government responded with approximately \$1.8 million in aid, but has done nothing to expedite work permits. As of September 13, 2023, the number of families sheltered in Massachusetts had increased to over 6,300, causing governor Healy to request a one-time infusion of nearly \$300 million in state funding and to mobilize 250 members of the National Guard to help provide access to food, transportation, medical care, education, and other necessities such as diapers and cribs.

For Massachusetts hotel owners, sheltering families can materially improve revenue per available room (RevPAR) and provide consistent revenue, especially during otherwise slower periods of the year. Moreover, most occupants do not require costly housekeeping services, which improves operating margins for hotel owners. Many of the additional services required by such occupants are provided by the Commonwealth.

Even with such benefits, however, sheltering migrants may be at best only a short-term solution for hotel owners. Less than two years ago, such business was largely non-existent; and such trends have a history of reversing unexpectedly. The current wave of migrants has been fueled by a non-repeatable event: the easing of COVID-era restrictions, which allowed migrants, many of whom had been waiting for years, to suddenly enter the country. There have also been a series of humanitarian crises in South America and the Caribbean (specifically Venezuela and Haiti), which have led to elevated levels of emigration. Finally, extreme dysfunction with federal immigration policy, including withholding work permits, has exacerbated the problem. The current levels of state spending are unsustainable. Hence, we may be at the high-water mark, with revenue reductions coming in the near future.

Hostile municipalities also provide enormous risks. While some have welcomed migrant families, many more have vigorously opposed shelter hotels. Municipalities claim that their schools are too overcrowded, and services too underfunded, to accommodate more families. Many have aggressively used the legal system, claiming that existing legal entitlements prevent occupants from staying in hotels for more than a short period of time, and threatening the permanent loss of such entitlements if hotel owners shelter migrants. In addition, earlier this year, governor Healey legally exempted shelter hotels from state sanitary code standards in response to widespread legal challenges from municipalities.

In closing, while there is nothing wrong with “making hay while the sun shines,” given the volatile history and numerous threats to the hotel shelter business, a prudent shelter hotel owner should also be preparing for the day when revenue from the state program may potentially no longer be available.

Joshua Bowman is a lawyer from the Boston law firm of Sherin and Lodgen LLP. Bowman is the chair of the firm’s hospitality practice group and is a well-known hospitality attorney.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540