

ARTICLE 21

TWENTY-FIRST ARTICLE

Submitted by: Jonathan Davis, TMM17, Bruce Levin, TMM17, Jonathan Margolis, TMM7

To see if the Town will amend the Town General By-Laws by adding the following at the end of Part VIII as follows:

8.XX.1 As used in this Article 8.XX the term “Hotel” means a hotel as defined in the Zoning By-Law, section 2.08(5). The term “Hotel” also means a limited service hotel as defined in the Zoning By-Law, section 2.12(1). As used in this Article 8.XX, the term “sex trafficking” means commercial sex induced by force, fraud and/or coercion, and also means commercial sex by a minor for the financial benefit of another person, regardless of how induced. As used in this Article 8.XX, the term “Employee” means (a) any employee of the Innholder who works at least 16 hours in any week provided that such employee’s principal work-site is the Hotel for which the license is issued and provided further that such employee’s principal responsibilities involve physical presence with Hotel guests and/or physical presence in Hotel guest rooms, (b) any employee of a third party, which employee, if employed by the Innholder, would be described in (a), above, and (c) any individual who is an independent contractor who, if the individual were employed by the Innholder, would be described in (a), above.

8.XX.2 The Innholder of a Hotel shall provide each of its Employees as hereabove defined with training to identify signs of possible sex trafficking in the Hotel and how to respond appropriately when such signs are observed. Such training shall be provided by a reputable anti-human trafficking entity, whether an agency of the Commonwealth of Massachusetts or of the United States, a not-for-profit organization, or a for profit entity (including, by way of example and not as a limitation, a national hotel brand). Training shall not be at any cost, expense, or reduction in wages or other compensation to any Employee. In the case of an Innholder that, at the time of a license application, already holds an in-force license for the same Hotel, which license was issued after enactment of this Article 8.XX, the Innholder shall provide the Select Board or its designee with a true and complete list of all Employees as hereabove defined who received the training since the issue of the current license and the job titles or job descriptions of such Employees, the identity of the training agency, organization or entity, a brief description of the training, the date or dates of such training, and, also, a true and complete list of all Employees as hereabove defined, and their job titles or job descriptions, who did not receive the training.

8.XX.3 Each Innholder shall cause anti-sex trafficking notices to be prominently posted and continually maintained in its Hotel in all locations where Employees are typically present but where the Hotel discourages or prohibits guests from entering – for example, staff locker rooms, staff lounges, staff snack rooms, staff lavatories, Hotel linen laundries, administrative offices, and supply rooms. The notices may be such as are provided by an

anti-human trafficking agency, organization or entity that provides training as set forth in 8.XX.2, whether or not the agency, organization or entity has provided training to the Employees. Each Innholder shall provide the Select Board and the Police Department with a true copy of the notice or notices to be posted and a list of all locations where such posting occurs. The Police Department may, at any reasonable time when the Hotel is open for business, enter the Hotel to examine the posting and maintenance of such notices and shall report concerns about insufficient posting and maintenance to the Innholder and to the Select Board or its designee .

8.XX.4 In the case of an Innholder that, at the time of a license application, already holds an in-force license for the same Hotel, which in-force license was issued after enactment of this Article 8.XX, the Innholder shall provide the Select Board or its designee with a true and complete report of when Employees are required to physically enter guest rooms other than to render service requested by a room occupant, and when Employees are required to look into guest rooms from an open doorway other than to respond to a request by a room occupant.

8.XX.5 This Article 8.XX shall take effect upon enactment.

8.XX.6(a) No provision of this By-Law shall apply where prohibited or preempted by state or federal law.

(b) If any provision of this By-Law, or the application thereof to any person or circumstances, is declared invalid, that invalidity shall not affect other provisions or applications of this By-Law which can be given effect without the invalid provisions or application, and to this end the provisions of this By-Law are severable.

Or act on anything relative thereto.

PETITIONER'S ARTICLE DESCRIPTION

Human trafficking in hotels, most often sex trafficking, is an international problem, and the United States is not immune. The U.S. Department of Homeland Security has an initiative to counter sex trafficking in the hotel industry (called "Blue Campaign"), as do the American Hotel and Lodging Association, several non-profits (e.g. ECPAT (End Child Prostitution and Trafficking)-USA, and the Polaris Project), and some hotel chains.

Several brochures about the problem, and combatting it, are attached.

States (including Massachusetts) have criminal laws against sex trafficking and also have civil laws that permit victims to recover monetary damages. The Massachusetts Attorney

General's office has a human trafficking division where suspected human trafficking can be reported.

Nevertheless, sex trafficking in hotels often goes unnoticed and is not prosecuted, commonly because hotel staff and management are unaware of the signs of possible sex trafficking.

Under the Article an Innholder for a hotel must provide training for certain kinds of workers ("Employees") at the hotel in identifying signs of sex trafficking and responding appropriately to the signs – these are workers who have worked at least 16 hours in any week, whose principal work-site is the hotel and whose principal responsibilities involve physical presence with hotel guests and/or physical presence in guest rooms. It is up to the Innholder to decide upon and engage the training entity, which must be a reputable anti-human trafficking entity as more detailed in the text of the Article. Where an applicant for an Innholder license already holds an Innholder license for the same hotel and the existing license was issued after enactment of the Article (in other words, where the applicant is seeking renewal of a license issued after enactment of the Article), the applicant must provide the Select Board or its designee with a report naming the entity providing the training, the dates of the training, a brief description of the training, a list of the workers and their job descriptions or job titles required to be trained during the existing license period who were trained, and the workers and their job descriptions or job titles required to be trained who were not. It is up to the Select Board to determine what, if anything, to do with this information in considering the application for renewal of the existing Innholder license, and the Select Board may take such action as it thinks advisable. In effect, an Innholder's license renewal is at risk if the Innholder licensee does not comply with the Article. Because the required reporting can only occur when a licensee already holds a license that was issued after the Article was enacted and the licensee is essentially applying for renewal of the existing license the licensee has a year before applying for renewal to provide the required training and to acquire the information needed to make the required report to the Select Board or its designee.

The petitioners have been told that all licensed hotels in Brookline currently require or will require staff training to a greater or lesser extent. But, there is no legal requirement – statewide or local – that requires training. **Currently, an applicant for a new Innholder license may decide not to provide training; and the holder of an existing license may decide to discontinue training. It's a business decision.**

Some of Brookline's hotels are required by their "flag" – that is, the brand under which they operate (for example, Hilton or Marriot) – to provide training. **However, whether or not to operate under a flag is a business decision for an Innholder licensee; and there is no legal requirement that a flag, itself, require training.**

The Article also requires hotels to post prominently and maintain anti-sex- trafficking notices in places not usually open to hotel guests. The notices may be such as are provided by anti-sex- trafficking entities that provide training (including entities that don't provide

training to the particular hotel that posts them). The notices are required to be posted in what the hotel industry calls “back of the house” - places where staff is present but Hotel guests are discouraged or prohibited from entering (for example, staff locker rooms, staff lounges, staff snack rooms, staff lavatories, Hotel linen laundries, administrative offices, and supply rooms). The reason for the notices is to remind staff of the problem and of their training. The Innholder must provide the Select Board or its designee and the Police Department with true copies of the notices to be posted and their locations. The Police Department may enter hotels at reasonable times during hotel business hours to examine posting and maintenance of required notices and must report its concerns about insufficient posting and maintenance to the Innholder licensee and to the Select Board or its designee. In the case of this requirement, Police Department reporting is not dependent on whether the existing Innholder license was issued after the enactment of the Article or whether the existing Innholder is applying for license renewal because posting and maintaining notices should not take a year to learn and it can be quickly performed and deficiencies can be quickly remedied. **Currently, there is no legal requirement that a hotel post informational reminders for staff about hotel sex-trafficking, even “back of the house”. It’s a business decision.**

Training hotel workers will be of limited effectiveness if they cannot observe the condition of guest rooms. Some “flags” require frequent staff entry or, at least observation, of guest rooms (for example, after two or three days). But, apart from “flag” requirements, hotels may not require observation at all, or require observation only after many days and nights – it’s a business decision. The Article requires that the holder of an Innholder license issued after enactment of the Article who is applying for a license (in effect seeking a license renewal) provide the Select Board or its designee with a report of when “Employees” (as defined in the Article) are required to physically enter guest rooms (other than when providing occupant-requested service) or observe guest rooms from open guest room doorways (other than when responding to occupant requests). It is up to the Select Board to determine what, if anything, to do with this information in considering the application for renewal of the existing Innholder license. If it appears to the Select Board that a particular hotel is an outlier among its peers in not requiring staff entry or observation (or in requiring infrequent staff entry or observation), or does not follow best practices, the Select Board may take such action as it thinks advisable.

These requirements are intended to try to prevent sex trafficking, and to contribute positively to public safety, public health, and the preservation of human rights and human dignity.

To petitioners’ knowledge there is no similar law in Massachusetts - either at the state level or the municipal level. Bills requiring training were introduced in the 2019-2020 and the 2021-2022 legislative sessions but were not enacted.

For an ECPAT-USA survey by state and municipality of anti-sex-trafficking laws with respect to the hospitality industry google: Unpacking+Human+Trafficking+Vol+4.2022.pdf

[Note – while the Warrant was open Volume 5 of the survey, the 2023 edition, had not yet been published.]

SELECT BOARD’S RECOMMENDATION

Article 21 is a petition to amend the Town’s by-laws to introduce requirements for hotel innholders to train staff to identify signs of possible sex trafficking and post anti-sex trafficking notices in all locations where employees are typically present but guests are not. It further requires innholders to report compliance with the new requirements to the Select Board when seeking relicensing, as well as information about when employees are required to physically enter or look into guest rooms other than upon the request of an occupant.

In debating Article 21, the Select Board noted that it appeared similar to an article proposed but not moved at a Special Town Meeting held in November of 2022. The Select Board questioned whether the Brookline Chamber of Commerce had approved of the article and received a response from petitioners that the Chamber’s innholder members had no objection. The Select Board further requested and received word from counsel for various innholders that there was no objection to the article. Finally, the Select Board questioned whether the article was propounded in response to the prior activities of a relatively recent innholder licensee; petitioners responded that the article was developed in response to the proposed practices of that licensee in their new hotel, not any past behavior on the licensee’s part.

With the above discussion, and following a prior public hearing on the matter, at a meeting held on April 25, 2023, the Select Board voted 4-0 to recommend FAVORABLE ACTION on the Advisory Committee’s motion under Article 21.

ROLL CALL VOTE:

Aye:

Greene

Aschkenasy

VanScoyoc

Sandman

ADVISORY COMMITTEE’S RECOMMENDATION

Recommendation: FAVORABLE ACTION on Article 21, as amended by the Advisory Committee and agreed to by the Petitioners, by a vote of 15-5-3.

Executive Summary:	<p>Article 21 seeks a new By-Law that would impose requirements on hotels to deter sex trafficking at their locations. These requirements are fourfold:</p> <ol style="list-style-type: none"> 1. Training of certain hotel staff to recognize the signs of sex trafficking; 2. Posting notices in various locations in the hotel to remind workers of their training and obligations; 3. Reporting on when employees are required to enter a guest’s room other than when requested by the guest; and 4. Reporting information to the Select Board or its designee regarding each of the three preceding categories.
Voting Yes will...	<p>Amend the By-Law by adding a new section to Article 8 that would require</p> <ol style="list-style-type: none"> 1. Training of certain hotel staff to recognize that sex trafficking is occurring within their hotel; 2. Posting notices in at least six prominent “back of house” hotel locations to remind workers of their training and obligations; 3. Reporting on when employees are required to enter a guest’s room other than when requested by the guest; and 4. Reporting information to the Select Board or its designee regarding each of the three preceding categories.
Voting No will...	<p>Make no change to the By-Laws.</p>
Financial impact	<p>None.</p>
Legal implications	<p>None.</p>

Introduction

Sex trafficking is a national and international problem. The U.S. Department of Homeland Security has an initiative to counter sex trafficking in the hotel industry (called “Blue Campaign”), as do the American Hotel and Lodging Association, several non-profits (e.g. ECPAT (End Child Prostitution and Trafficking)-USA, and the Polaris Project), and some hotel chains.

States (including Massachusetts) have criminal laws against sex trafficking and also have civil laws that permit victims to recover monetary damages. The Massachusetts Attorney General’s office has a human trafficking division where suspected human trafficking can be reported.

Nevertheless, sex trafficking in hotels often goes unnoticed and is not prosecuted, commonly because hotel staff and management are unaware of the signs of possible sex trafficking.

Brookline currently has six hotels that fall within the definition of the proposed Article and subject to licensing by the Town. A seventh, at 30 Webster Place, is on the way.

Article 21, as amended by the Advisory Committee, would create a new By-Law that would impose requirements designed to discourage and deter sex trafficking at hotels. These requirements are fourfold:

1. Training of all hotel staff, whether employees or independent contractors, who work 16 or more hours per week, and whose principal work-site is the hotel and whose principal responsibilities involve physical presence with hotel guests and/or physical presence in guest rooms. This training, which must be by a reputable anti-human trafficking entity, must teach the staff to identify signs of sex trafficking and respond appropriately to the signs.
2. Posting and maintaining notices in at least six prominent locations in the hotel not usually open to guests (“back of the house” locations). The reason for the notices is to remind staff of the problem and of their training.
3. Because training hotel workers will be of limited effectiveness if they cannot observe the condition of guest rooms, the Article requires reporting on when employees are required to enter a guest’s room other than when requested by the guest.
4. Reporting information to the Select Board or its designee (and in the case of the notices, to the Police Department as well) regarding each of the three preceding categories.

To Petitioners’ knowledge, Brookline would be the first community in Massachusetts to adopt such an ordinance, as there are no similar laws in Massachusetts - either at the state level or the municipal level. Bills requiring training were introduced in the 2019-2020 and the 2021-2022 state legislative sessions but were not voted on.

Currently, four states mandate training in the hospitality industry, and twenty states have various mandatory signage laws. For a summary, *see* ECPAT-USA, “Unpacking Human Trafficking, A Survey of State Laws Targeting Human Trafficking in the Hospitality Industry,”

<https://www.ahla.com/sites/default/files/Unpacking%20Human%20Trafficking-v4.pdf>.

Evaluation Methodology/Research

Petitioners consulted with the Police Department and Town Counsel in developing their warrant article.

- Paul Saner, Co-Chair of the Brookline Economic Development Advisory Board (EDAB), emailed the chair of the Human Services Subcommittee on March 22 that “EDAB will not be hearing this. Staff and co-chairs have heard from most of the hotels in Town that the requirements of this article are not a concern to them. Hotels already conduct training of their own accord and signage in employee spaces will not affect guests/customers. The concerns raised prior to the last Town Meeting are moot and we believe the hotels have no objections.”
- The Brookline Chamber of Commerce, by letter dated April 5, 2023, indicated its express support of the Article.
- A public hearing was held on September 30, 2022, via Zoom on the article’s predecessor, Article 32, which was submitted on the Fall 2022 Town Warrant. (Due to numerous concerns raised at the public hearing, Article 32 was not moved at Town Meeting by Petitioners.) The recording of that hearing is available here: https://brooklinema.zoomgov.com/rec/share/aaO1_9IL72cu8NgsWTLJAhoQ-qagYxMTC3fwEBOIYpey6W9-5eSJaQnRmu7zGPbE.s9rAtKIdMD5yI2DQ
Passcode: u!H8#9Qd
- A public hearing was held on March 28, 2023, via Zoom on Article 21, which is a revised version of Fall 2022’s Article 32. The recording of that hearing is here: <https://brooklinema.zoomgov.com/rec/share/ScWeGJTgWCHChSJqxJjFxEp4icof35oa0FwLfo27BZD1nFouTcIZQUSAMoCyBtT.Ib8FbwHiF2tQmEYa>

Discussion

Petitioners had placed Article 32 on the Fall 2022 Town Warrant. Article 32 had also attempted to influence the behavior of hotel operators to act in ways that proactively deterred sex trafficking. While no one expressed opposition to the training requirements, because of numerous other issues identified by the Police Department, the Human Services Subcommittee, and the Town’s local hotels during the Subcommittee’s hearing on September 30, 2022, the Petitioners decided not to move Article 32, either as originally submitted or as amended, and the Advisory Committee did not vote.

Article 21 addresses all of the key concerns of the various parties, such that there is no opposition from either the Police Department or the hotels, and the Brookline Chamber of Commerce expressly supports it. This By-Law should not require any additional staff time by the Police Department because BPD already periodically inspects all hotels for compliance with other legal signage posting requirements.

There is no available evidence that sex trafficking, defined in the Article as “commercial sex induced by force, fraud and/or coercion, and also ... commercial sex by a minor for the financial benefit of another person, regardless of how induced,” is a problem in Brookline

hotels. However, it was argued that, because of the nature of the problem, we also just don't know.

Even in the apparent absence of a current problem, a large majority of Advisory Committee members believe that the Article is nonetheless necessary both to deter the development of sex trafficking at the hotels and to help expose it, should it develop. Far better to act now before sex-trafficking becomes a problem than to act reactively once it becomes one. Although the proposed By-Law does not require that the Select Board take any action based on the information required to be reported, the Advisory Committee trusts that the reports to the Select Board will be one of the factors that the Select Board considers when deciding on whether to renew an Innkeeper's annual license.

Those Advisory Committee members who opposed the Article did so primarily because they believed that a new By-Law was unnecessary and that the goals of the Article could be better achieved by including the proposed requirements as conditions in the hotel license renewal process rather than in the By-Laws. One Advisory Committee member also expressed their opposition to the Article because in their view it continued a distressing societal trend of creating unwarranted suspicion and reporting.

The Human Services Subcommittee of the Advisory Committee, at the March 28 public hearing, adopted two amendments that concerned 1) the number of notices a hotel must post; and 2) the privacy of employee names and data. Petitioners agreed to these amendments. This was the version of the Article that the Advisory Committee voted on, a copy of which appears at the end of this report.

Amendment #1

As originally written, Article 21 required the posting of anti-sex trafficking notices "in all locations where Employees are typically present but where the Hotel discourages or prohibits guests from entering..." The Subcommittee believed this unlimited number was both excessive and would tend to trivialize the message. The amendment is to the first sentence of para. 8.XX.3 as follows (deletions marked with ~~strikeout~~, additions in **bold**):

Each Innholder shall cause anti-sex trafficking notices to be ~~prominently~~ posted and continually maintained in its Hotel in ~~all~~ **at least six prominent** locations where Employees are typically present but where the Hotel discourages or prohibits guests from entering - for example, staff locker rooms, staff lounges, staff snack rooms, staff lavatories, Hotel linen laundries, administrative offices, and supply rooms.

Amendment #2

As originally written, Article 21 also required that, among other things, the hotel provide the Select Board or its designee with "a true and complete list of all Employees" who

received and did not receive the required training. To protect against the public disclosure of employee names, this language was deleted and replaced with a requirement that only the number of employees who did and did not receive the training be reported. The amendment is to the last sentence of para. 8.XX.2 as follows (deletions marked with ~~strikeout~~, additions in **bold**):

In the case of an Innholder that, at the time of a license application, already holds an in-force license for the same Hotel, which license was issued after enactment of this Article 8.XX, the Innholder shall provide the Select Board or its designee with ~~a true and complete list~~ **the number** of all Employees as hereabove defined who received the training since the issue of the current license and the job titles or job descriptions of such Employees, the identity of the training agency, organization or entity, a brief description of the training, the date or dates of such training, and, also, ~~a true and complete list~~ **the number** of all Employees as hereabove defined, and their job titles or job descriptions, who did not receive the training.

“Scrivener’s error”

A scrivener’s error was corrected in the third sentence of para. 8.XX.3. With the exception of this sentence, whenever information is required to be reported to the Select Board, the information is reported to “the Select Board or its designee.” To avoid confusion, this third sentence has been corrected to include a similar reference to “or its designee.” This language corrected the third sentence of para. 8.XX.3 as follows (addition in **bold**):

Each Innholder shall provide the Select Board (**or its designee**) and the Police Department with a true copy of the notice or notices to be posted and a list of all locations where such posting occurs.

Recommendation: By a vote of 15-5 with 3 abstentions, the Advisory Committee recommends FAVORABLE ACTION on Warrant Article 21, as amended by the Advisory Committee and agreed to by the Petitioners. The full amended motion follows.

VOTED: That the Town amend the Town General By-Laws by adding the following at the end of Article 8 as follows:

8.XX.1 As used in this section 8.XX the term “Hotel” means a hotel as defined in the Zoning By-Law, section 2.08(5). The term “Hotel” also means a limited service hotel as defined in the Zoning By-Law, section

2.12(1). As used in this section 8.XX, the term "sex trafficking" means commercial sex induced by force, fraud and/or coercion, and also means commercial sex by a minor for the financial benefit of another person, regardless of how induced. As used in this section 8.XX, the term "Employee" means (a) any employee of the Innholder who works at least 16 hours in any week provided that such employee's principal work-site is the Hotel for which the license is issued and provided further that such employee's principal responsibilities involve physical presence with Hotel guests and/or physical presence in Hotel guest rooms, (b) any employee of a third party, which employee, if employed by the Innholder, would be described in (a), above, and (c) any individual who is an independent contractor who, if the individual were employed by the Innholder, would be described in (a), above.

8.XX.2 The Innholder of a Hotel shall provide each of its Employees as hereabove defined with training to identify signs of possible sex trafficking in the Hotel and how to respond appropriately when such signs are observed. Such training shall be provided by a reputable anti-human trafficking entity, whether an agency of the Commonwealth of Massachusetts or of the United States, a not-for-profit organization, or a for profit entity (including, by way of example and not as a limitation, a national hotel brand). Training shall not be at any cost, expense, or reduction in wages or other compensation to any Employee. In the case of an Innholder that, at the time of a license application, already holds an in-force license for the same Hotel, which license was issued after enactment of this Article 8.XX, the Innholder shall provide the Select Board or its designee the number of all Employees as hereabove defined who received the training since the issue of the current license and the job titles or job descriptions of such Employees, the identity of the training agency, organization or entity, a brief description of the training, the date or dates of such training, and, also, the number of all Employees as hereabove defined, and their job titles or job descriptions, who did not receive the training.

8.XX.3 Each Innholder shall cause anti-sex trafficking notices to be posted and continually maintained in its Hotel in at least six prominent locations where Employees are typically present but where the Hotel discourages or

prohibits guests from entering - for example, staff locker rooms, staff lounges, staff snack rooms, staff lavatories, Hotel linen laundries, administrative offices, and supply rooms. The notices may be such as are provided by an anti-human trafficking agency, organization or entity that provides training as set forth in subsection 8.XX.2, whether or not the agency, organization or entity has provided training to the Employees. Each Innholder shall provide the Select Board (or its designee) and the Police Department with a true copy of the notice or notices to be posted and a list of all locations where such posting occurs. The Police Department may, at any reasonable time when the Hotel is open for business, enter the Hotel to examine the posting and maintenance of such notices and shall report concerns about insufficient posting and maintenance to the Innholder and to the Select Board or its designee.

8.XX.4 In the case of an Innholder that, at the time of a license application, already holds an in-force license for the same Hotel, which in-force license was issued after enactment of this section 8.XX, the Innholder shall provide the Select Board or its designee with a true and complete report of when Employees are required to physically enter guest rooms other than to render service requested by a room occupant, and when Employees are required to look into guest rooms from an open doorway other than to respond to a request by a room occupant.

8.XX.5 This section 8.XX shall take effect upon enactment.

8.XX.6(a) No provision of this By-Law shall apply where prohibited or preempted by state or federal law.

(b) If any provision of this By-Law, or the application thereof to any person or circumstances, is declared invalid, that invalidity shall not affect other provisions or applications of this By-Law which can be given effect without the invalid provisions or application, and to this end the provisions of this By-Law are severable.

ARTICLE 21 ADVISORY COMMITTEE VOTES

Article Description	License requirements to deter sex trafficking in hotels
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AC recommendation (Favorable Action unless indicated)	15-5-3
Ben Birnbaum	Y
Harry Bohrs	
Cliff Brown	A
Patty Correa	Y
John Doggett	Y
Katherine Florio	
Harry Friedman	A
David-Marc Goldstein	Y
Neil Gordon	Y
Susan Granoff	Y
Kelly Hardebeck	N
Amy Hummel	N
Anita Johnson	N
Alisa Jonas	Y
Janice Kahn	Y
Pam Lodish	
Joslin Murphy	N
Donelle O’Neal, Sr.	
Linda Olson Pehlke	Y
Markus Penzel	Y
David Pollak	Y
Stephen Reeders	Y
Carlos Ridruejo	A
Lee Selwyn	Y
Alok Somani	N
Carolyn Thall	Y
Christine Westphal	Y
Dennis Doughty *	
* Chairperson does not vote except to break a tie	