

Draft 8/4/21

## PROPOSED COMPLAINT COMMITTEE BYLAW

["Citizen" has been dropped from the title to include persons who have not yet become citizens]

ARTICLE 3.14 [Should the name of the Commission be changed to Human Rights Commission, which is a broader term and is used by many of our neighboring cities and towns?]

### SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

No change in subsections (i) thru (iv)

Delete subsections (v) thru (x) and substitute the following:

(B) To carry out its responsibilities the Commission shall establish a Complaint Committee (CC or the Committee) charged with investigating and receiving complaints, directly or through the CDO, from persons or organizations who came in contact with the Town involving allegations of discrimination or bias by the Town or its employees, agents or officials or by another person or organization in Brookline **including but not limited to employment, public accommodations, housing, education, and provision of services.** However this Bylaw shall not prevent a complainant or any person charged in a complaint (a respondent) from electing to use complaint procedures available to that person under policies of the Police Department, Human Resources Department, or civil service laws. **Furthermore this Bylaw shall be inapplicable to students, faculty and staff of the School Department to the extent required by applicable federal law (including but not limited to Title IX).**

i. **The Complaint Committee shall consist of not more than 5 persons chosen by the Commission for one year renewable terms.** The Committee shall include attorneys or other individuals with applicable legal and/or civil rights experience as well as **members of historically marginalized communities.** Members of the Committee must be residents of Brookline and at least one shall be a member of the Commission. The CC shall choose its Chair for one year renewable terms. The CDO and its staff shall be the staff for the Committee.

(ii) **The jurisdiction of the Committee shall include complaints of violation of Fair Housing laws and it shall prepare and publicize rules defining what constitutes discrimination in the purchase, sale, financing and leasing of real property.**

(iii) The Complaint Committee shall create a complaint form but may receive complaints in any written form or orally. If an oral complaint is received, the complainant may edit the notes prepared by the CC. The CC shall take steps to publicize its procedures and encourage the public to file complaints **if they believe they have been the subject of discrimination.** If a complainant wishes to use the complaint form but has **trouble with language** or other issues in completing the form, **the CC shall work with the CDO to provide reasonable accommodations and translators if needed.** Complaints may be received by any member of the Commission, the CC, or the staff of the CDO but shall be delivered to the CDO for logging in and preliminary investigation. A copy of the complaint shall also be promptly given to the respondent who shall have 30 days to file an answer with the Committee.

(iv) The CDO shall review each complaint to determine whether, assuming the allegations in the complaint are true, the complainant has established a plausible case of discrimination that falls within the jurisdiction of the Committee. The review shall be completed in 30 days after receipt of the complaint unless the CDO determines an extension is necessary.

(v) If the CDO determines that the complainant has not established a plausible case of discrimination, the complainant has 45 days to appeal the determination to the CC from the time of its receipt; this appeal may be heard by one member of the CC and shall be completed within 30 days of receipt of the appeal.

(vi) If the CDO's initial review or appeal to the CC determines the complainant has established a plausible case of discrimination that falls within the jurisdiction of the Committee, the CDO and one member of the CC shall investigate the complaint. The investigation may typically involve interviews of the parties and witnesses, review of pertinent documents and videos, and review of other relevant sources. The results of the investigation shall be reported to the parties and the Committee and the parties would be given the opportunity to challenge its conclusions. During the initial receipt of the complaint and at any point thereafter, the CDO shall advise the complainant of the right to file a complaint with the Massachusetts Commission Against Discrimination (MCAD) or other appropriate federal, state or local agencies in lieu of pursuing rights under this Bylaw.

(v) At any point during the proceedings, the parties may agree to submit the matters in dispute to mediation. The mediation may be conducted informally by the CDO or formally by an impartial mediator appointed by the American Arbitration Association subject to their rules and procedures. The results of the mediation are considered a binding agreement that can be enforced in a court proceeding.

(vi) If mediation is not chosen or is unsuccessful to resolve the matter the complainant may elect to have a hearing before a (panel of 3 members of the CC – check with TC.) chosen by its Chair and the hearing shall be held within 30 days of the completion of the investigation if mediation is not chosen or the completion of an unsuccessful mediation. The CC shall adopt and publish rules of procedure for its hearings which shall include rights to representation by legal counsel, cross examination of witnesses and legal due process in matters where the respondent is not an employee, agent or official of the Town or the Town itself and may be subject to fines, injunctions or other penalties by a court

(vii) The Committee shall have the power to subpoena witnesses, compel their attendance, administer oaths, serve written interrogatories, take testimony of any person under oath, and require the production of any evidence and/or answers relating to any matter in question or under investigation before it. Witnesses shall be summoned in the same manner, be paid the same fees and be subject to the same penalties for default as witnesses in civil cases before the courts.

(viii) If, upon all the evidence, the hearing panel of the Committee shall find that a respondent has engaged in any unlawful practice or violation of this Bylaw, the panel shall report its findings of fact to the Committee and if the Committee approves the findings it shall seek relief through one or more of the following actions:

a. If the respondent is an employee, agent or official of the Town or the Town itself, the Committee shall refer the case to the Human Resources Department in the case of an employee or to the Select Board in the case of an agent or official of the Town or the Town itself.

b. If the respondent is a person or organization not described in subparagraph (a) above the Committee may

(1) Levy a civil fine of up to 300 dollars for each such violation. Each day of any violation of this Bylaw shall constitute a separate offense. Any such penalty or penalties shall be enforced through non-criminal disposition as set forth in G.L. c. 40 § 21D;

(2) File a complaint against the respondent in a court of appropriate jurisdiction seeking injunctive relief, including a temporary restraining order; or

(3) File a complaint against the respondent in a court of appropriate jurisdiction seeking the award to the complainant of damages, expenses, punitive damages and other relief, as appropriate.

(4)

(ix) The CDO shall develop, to the extent permissible by law, a log for complaints filed with the Committee and render to the Select Board a written report of the activities and recommendations of its office and the Committee under this Bylaw not less than once a year.

(x) The Commission shall work with the CDO to facilitate changes that will reduce or eliminate violations of the civil or human rights of persons or organizations who come in contact with the Town as reflected in the complaints or pattern of complaints filed with the Committee.

(xi) [Pick up from existing bylaw]

(xii) [Pick up from existing bylaw]

Change headings B and C to C and D and retain content

References:

Cambridge. Ch 2.76.140-180 HRC. Ch 14.04 Fair Housing  
Newton. Ord Art V sec 12-50  
Somerville. Ch 2 Art V sec 2-237-245 and 7.41-48