

MINUTES OF CTOS MEETING – September 21, 2022

The Brookline Committee on Town Organization and Structure (CTOS) held a duly posted meeting via the Zoom platform on September 21, 2022 to discuss relevant warrant articles coming before the fall Town Meeting.

In attendance were; Dick Benka (CTOS), Abby Cox (CTOS), Betsy DeWitt (CTOS), Sean Lynn-Jones (CTOS), Sandy Batchelder (CDICR), Arthur Conquest (Town Meeting), Regina Frawley (Town Meeting), Bernard Greene (Select Board), Neil Gordon (Advisory Committee), Marty Rosenthal (Town Meeting)

The meeting began at 6:00 p.m.

The committee opened the public hearing on Article 31. Bernard Greene, the petitioner, explained the intention was to replace 2019's Article 24, which came into effect in the summer when Articles 12 & 13 did not pass the 2022 Spring Town Meeting and were, instead, referred back to CDICR. He attended a CDICR meeting in June where he perceived that the problems would not be fixed. Greene believes that Brookline needs a "sensible" complaint process that provides a forum to informally resolve relatively minor behavior and a means to assist complainants to take their concerns to state and other agencies (i.e., MCAD, EEOC, MDEP, or the AG's Office) or to the Brookline police department where appropriate. As proposed, Article 31 would utilize the Chief Diversity Officer (CDO) and staff, who are professionally trained, to manage the process. This year, there have been 28 complaints (as compared with 56 last year.) Some of those complaints include violations of civil rights, but are not relevant for MCAD. Under Article 31, the CDO would retain the power to educate about discrimination and identify/thwart it (e.g. send "checkers" and other proactive measures.) Greene pointed out that businesses are licensed by the Town, and that those licenses could be leveraged in cases of alleged public accommodations discrimination. Betsy DeWitt asked whether fines or subpoenas were part of the proposal (as they had been in the Articles 34&35 that came before the spring Town Meeting.) Greene said they were not, though if someone were referred to a specific department (e.g. DPW) that has the power to levy fines, it could happen that way. His hope is that the process outlined in Article 31 will allow intervention, prevention, and/or remediation, where a subpoena seems like an unnecessary use of excessive force. The committee asked Sandy Batchelder for his perspective, acknowledging that he had another meeting to attend within a few minutes and so might not be able to deliver his full response. Batchelder commented that Article 31 is very dense. Next week, the Complaint Committee will meet with Greene to review it together. He expressed the following concerns: 1) the proposal does not cover small businesses that refuse to serve someone, 2) there is no provision for citizen vs. citizen complaints, 3) there is no provision for a complaint committee (CDICR has to supply it) and no definition of a working group, 4) there is no training, so due process could be an issue, 5) no hearings, 6) the right of appeal ultimately goes back to the CDO, which is circular, 7) no subpoenas, which would be problematic in cases where there is a serious dispute of facts and no cooperation, 8) no fines, which he believes are needed to make people pay attention and would be a deterrent, even if not used, 9) concerns about the ease of filing complaints, 10) there is no statute of limitations, 11) no provisions against retaliation, and 12) the jurisdiction is too broad. The existing bylaw says complaints must be investigated and reported. CDICR is engaged with Town Counsel to write regulations to flesh that out, but it will take a while. Therefore, there is a choice between Greene's proposal and existing bylaws with regulations that will be

cleared by Town Counsel, approved by CDICR, and voted by the Select Board. Batchelder believes the latter will be the better choice. Regina Frawley asked if the process outlined in Article 31 would create a court in essence or whether it could morph into one. Neil Gordon commented that Town Meeting had referred Articles 12 & 13 back to CDICR, and that CDICR's complaint review committee had shown no intent to do anything but refile 12 at the May Town Meeting. He referred CTO&S to the public record of the CDICR June meeting. Marty Rosenthal stated that his greatest concern (since 2016) is parallel and duplicative complaint procedures against Town employees (He noted previous reports CTO&S had issued in this regard.) He noted that Article 31 takes town employees out of the CDICR process (there is already a process through Human Resources.) Arthur Conquest asked whether this means that Articles 12 & 13 become moot, or whether there was the ability to bring them back to Town Meeting. Benka replied that if Article 31 fails at the coming Town Meeting, we will continue to use the bylaw instituted by 2019's Article 24, but if Article 31 passes and gets approval from the AG's office, it will replace what we currently have. However, there is nothing to preclude petitioners from bringing Article 12 back in a future Town Meeting. At 6:44, the committee voted to close the public hearing on Article 31.

The committee opened a public hearing on Article 30. Arthur Conquest, the petitioner, explained the intent of the proposal is to create a commission that will focus specifically on issues that affect Black and Brown residents in Brookline. He pointed out that it was well past time that such a commission should have existed. He cited a personal example of attempting to get tickets for a group of children from public housing to attend the recent U.S. Open tournament that was held in town, and the frustrations of having to employ the assistance of many white people in power. Conquest would like to be sure that Black and Brown residents can do for themselves instead of others doing for them. He pointed out that there are already commissions for other groups in protected classes like women, Indigenous people, and people with disabilities. He believes this commission would create a sense of unity and an opportunity for working together. He and others are tired of being "invited" as 1-2 members of all white groups. Marty Rosenthal agrees with the goal, but asked why not have this commission be part of the CDICR, as it's part of their mandate. Conquest cited the example of a recent CDICR Disparity report that did not include any Black or Asian members in the working group. Regina Frawley asked if the commission's work would be related to complaints. Benka questioned whether the term "investigate" used in the proposed article was for complaints. Conquest responded that it did not. Conquest spoke about a group of Brookline High School students who protested last spring, which led to the formation of a subcommittee to examine the issues. He wants a Black and Brown Commission that will ensure that concerns are not ignored. Benka asked what the petitioner meant by the phrase "independent of the constraints of town government." Would the commission not be appointed by the Select Board? Would there not be town appropriations? In response, Conquest communicated his distrust of town government. He stated that he has been here for 40 years and has been outspoken. He was rejected from the first creation of CDICR (under a different name at the time). He believes the power structure looks for the least vocal members of the community to serve on boards so the town doesn't get at some of the major issues. Betsy DeWitt pointed out that the warrant article asks the Town to create and appoint the commission, but it sounds like the petitioner wants something private or maybe more like a not-for-profit, and asked for clarification. Sean Lynn-Jones framed the decision: The proposed commission could be like the others, created by a bylaw and appointed by the Select Board; or, it could be a community based organization (like PAX) that is an independent advocacy group. He also asked who would qualify as "Brown." Conquest replied that the Asian community has posed that question, and Latinx is part of the discussion as well. He explained that it is "all evolving." Benka pointed out that

“Town Meeting establish” suggests that it would be a bylaw, and asked what the petitioner sees as the process. Benka advised that there would be greater flexibility with a resolution than with a proposed bylaw change. At 7:13, the committee voted to close the public hearing.

The committee made assignments for work to investigate Articles 30 and 31. Lynn-Jones shared that he had been surprised to hear from Sandy Batchelder tonight that regulations were being developed to underpin the existing bylaw around the complaint process, and indicated that he has questions of how much can be done through regulations, and what that means for transparency and democracy.

The meeting adjourned at 7:20 pm.