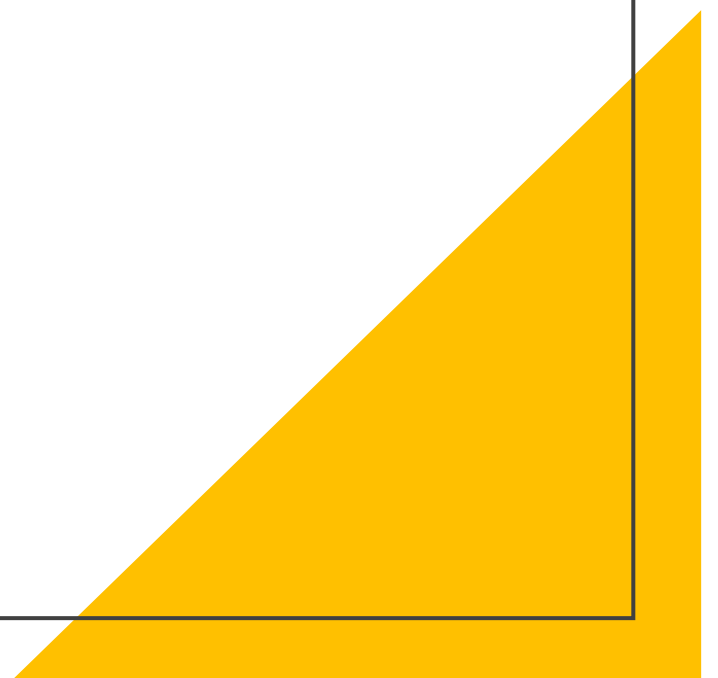


# REVISED DISCRIMINATION COMPLAINT PROCESS PUBLIC HEARING

January 2021

Complaint Process Subcommittee of the  
Commission for Diversity, Inclusion and Community Relations



# Hearing Overview

Brief (15 minute) overview presentation,  
followed by public comment

A hearing is not a debate/discussion. Committee will  
listen to comments and clarify/answer any questions.

Revised bylaw draft can be found at  
[www.brooklinema.gov/DocumentCenter/View/28278](http://www.brooklinema.gov/DocumentCenter/View/28278)

# Purpose of revising the discrimination complaint process

Ensure that people (residents, employees and visitors) who experience any form of discrimination receive appropriate support, that there is a fair and timely process for resolving discrimination complaints, and that anyone who has experienced discrimination has their legal rights fully met.

Ensure that there is a plan to identify patterns of discrimination and take actions to reduce the sources of discrimination.

Brookline protected classes are defined as “race, color, ethnicity, gender, sexual orientation, gender identity or expression, disability, age, religion, creed, ancestry, national origin, military or veteran status, genetic information, marital status, receipt of public benefits (including housing subsidies), or family status (e.g. because one has or doesn't have children)”

**What are the protected categories of people?**

# What was the problem with the previous process?

- Was limited to complaints made against the Town itself
- Was limited in actions that could be taken as a result of any investigation
- **New process provides for:**
  - complaints beyond the Town
  - additional options for relief

# Timeline of committee work on revisions

We are here

Fall 2019

Arthur Conquest submits warrant article to revise complaint process  
CDICR endorsed revised complaint process with intent to refine it, puts effective date of July 2021

2020-2021

COVID causes delays in process  
Subcommittee begins meeting in late Spring 2020  
Committee meets 30+ times to evaluate similar community bylaws, design language for Brookline  
Spring 2021 Town Meeting approves delay of effective date to July 2022

2022

CDICR approves initial draft of language  
**Public hearings in January**  
Warrant article to be submitted by early March  
Review by committees  
Town Meeting vote in May

# Revised discrimination complaint process

- Within Town Bylaw 3.14, which is about the Commission and Office for Diversity, Inclusion and Community Relations
- Specifically, within 3.14.3

ARTICLE 3.14  
COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS AND OFFICE  
OF DIVERSITY, INCLUSION AND COMMUNITY RELATIONS

SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

# Key proposed revisions are in Section 3.14.3 (B)

- Establishes the Complaint Committee that will investigate complaints of discrimination
- Complaints can be made against the Town, or against another entity in Brookline

(B) To carry out its responsibilities the Commission shall establish a Complaint Committee (CC) charged with investigating and receiving complaints, directly or through the Chief Diversity Officer (CDO). Complaints involving allegations of discrimination can be made by persons or organizations against the Town, its employees, agencies, or officials, or against

another person or organization concerning incidents of discrimination occurring in Brookline. A third party may also file a complaint on a person or organization's behalf, or on behalf of a class of people. These complaints may involve, but are not limited to, employment, public accommodations, housing, policing, education, and provision of services, health care, or credit. Furthermore, this Bylaw shall be applicable to students, faculty and staff of the School Department to the extent permitted by federal law (including, but not limited to, Title IX).



# Section (B)(i): process is intended to be accommodating

- Reasonable accommodations including translation

(i) The CC shall work with the CDO to provide flexibility for complainants, including reasonable accommodations and translators if needed for individuals with limited English proficiency or other communication and/or access issues.

# Section (B)(ii): membership of the complaint committee

- Up to 5 Brookline residents with relevant backgrounds
- At least one also on CDICR
- Renewable one-year terms

(ii) The CC shall consist of not more than 5 persons chosen by the Commission for one year renewable terms. The CC 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 CC 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 CC.

# Section (B)(iii) and (ix): receiving and directing complaints

- Form prepared but complaints also accepted orally
- Multiple people can receive complaints
- Complainant advised of alternative venues in which to file and encouraged to pursue alternative dispute resolution (including restorative justice)
- Copy of complaint given to respondent

(iii) The CC shall create a complaint form but may receive complaints in any written form or orally. 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. Complaints may be received by any member(s) of the Commission, the CC, the CDO, or the staff member(s) within the ODICR, but shall be delivered to the CDO for logging in and preliminary investigation pursuant to Section 3.14.3(B)(iv). If an oral complaint is received, the complainant may edit the form and additional materials prepared by the person(s) receiving the complaint. During the initial receipt of the complaint and at any point thereafter, the CDO shall advise the complainant in writing of the right to file a complaint with the Massachusetts Commission Against Discrimination (MCAD), other appropriate Town departments, and other appropriate federal, state or local agencies in lieu of pursuing rights under this Bylaw, as well as the alternative dispute resolution options described in Section 3.14.3(B)(ix). A copy of the complaint shall also be promptly given to the respondent who shall have 30 days to file an answer with the CC.

(ix) At any point during the proceedings, the parties may agree to submit the matters in dispute to alternative dispute resolution, including but not limited to mediation, arbitration, and restorative justice. The alternative dispute resolution may be conducted informally by the CDO or its designee, or formally by an impartial arbitrator appointed by the American Arbitration Association subject to their rules and procedures. The results of the alternative dispute resolution may be considered a binding agreement that could be enforced in a court proceeding, as may be permitted by law.

# Section (B)(iv)-(v): initial screening of complaint, appeal to initial screening

- Standard criteria to be developed to screen whether complaint is plausible discrimination
- Complainant can appeal if their complaint is not deemed plausible

(iv) The CDO shall, using written and published criteria developed with the CC, 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 CC. The review shall be completed in 30 days after receipt of the complaint unless the CDO determines an extension is necessary. The CDO shall notify the complainant and respondent of its plausible case determination or if 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 will be heard by one member of the CC, and shall be completed within 30 days of receipt of the appeal.

# Section (B)(vi) and (x): investigation

- Investigation following published rules of procedure
- May include interviews, review of relevant materials
- Report produced by investigators
- Both parties may also submit documentation

(vi) If the CDO's initial review or the complainant's appeal to the CC results in a determination of a plausible case of discrimination that falls within the jurisdiction of the CC, the CDO or its designee and one member of the CC shall investigate the complaint. The CC shall adopt and publish rules of procedure for its investigations. 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, including notice of their right to appeal, and the full CC. The complainant and respondent may elect to submit written documentation to also be submitted with the report to the CC. If the investigation concludes that no violation of this Bylaw has occurred, the CC shall dismiss the complaint, with notice to the complainant of their appeal rights. If the investigation concludes that the respondent has violated this Bylaw and no appeal is filed, the CC shall seek relief as set forth in Section 3.14.3(B) (viii)

(x) The CC 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 and be paid the same fees. Town departments and agencies shall cooperate as described in Section 3.14.5.

# Section (B)(vii): investigation appeal

- Like investigation, appeal will occur following published rules of procedure
- Also like investigation, may include interviews, review of relevant materials
- Report produced by appeal panel that supersedes investigation report

(vii) The complainant or respondent may appeal the results of the investigation within 45 days of receiving the investigation report. If appealed by either party, there will be an appeal hearing before a panel of 3 members of the CC chosen by its Chair and the hearing shall be held within 30 days of the appealing filing date. Based upon all of the evidence and information presented on appeal, the panel shall affirm or overturn the results of the investigation and report its decision to the parties and the full CC. If the panel reports to the CC that no violation of this Bylaw has occurred, the CC shall dismiss the complaint. If the panel reports to the CC that the respondent has violated this Bylaw, the CC shall seek relief as set forth in Section 3.14.3(B)(viii). The CC shall adopt and publish rules of procedure for its appeal hearings which shall include the right to due process.

# Section (B)(viii): if there has been a violation

- Town violations are turned over to the Select Board with recommendations
- Violations by other individuals or entities may be fined up to \$300/violation

(viii) If, upon all the evidence, the CC shall find that a respondent has engaged in any violation of this Bylaw, the CC

shall seek relief within 30 days of the panel's report, 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 CC shall provide findings of fact and recommendations to the Select Board.

(b) If the respondent is a person or organization not described in subparagraph (a) above the CC may (through the Chief Diversity Officer) levy a civil fine of three hundred dollars (\$300) for each such violation or other such sum as allowed by law. Each day or separate 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;

# Section (B)(xi)-(xii): tracking outcomes, changing behavior over time

- Routine reporting for accountability
- Patterns over time will be analyzed to see how to change behavior

(xi) The CDICR and CC shall work with the CDO to facilitate changes, including taking appropriate corrective actions, that will reduce or eliminate violations of this by-law and 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 CC.

(xii) The CDO shall develop, to the extent permissible by law, a log for complaints filed with the CC and render to the Select Board a written report of the activities and recommendations of its office and the Committee under this Bylaw quarterly. This report shall be made available to the public as may be consistent with the Massachusetts public records law.



# Section (B)(xiii): retaliation

- Retaliation strictly prohibited

(xiii) A person may not retaliate against another person who, in good faith, filed a complaint, testified, participated, or assisted in any way in a proceeding under this bylaw. A person may not intimidate a witness, complainant, or respondent in a proceeding before the Commission.

# Diagram of complaint process

