

CDICR BYLAW REVISION – SUBMITTED FOR WARRANT

Submitted by Sandy Batchelder on behalf of the CDICR, with Mariah Nobrega and Deborah Brown. Contact emails: sbatch@comcast.net, mariah.nobrega@gmail.com, deborah.brown1@comcast.net

To see if the Town will amend the Town's General By-laws, 3.14 as follows (language to be stricken appearing in ~~strikeout~~, language to be added appearing in underline):

ARTICLE 3.14

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

SECTION 3.14.1 ESTABLISHMENT AND PURPOSE

This By-law establishes the Commission for Diversity, Inclusion, and Community Relations ("Commission" or "CDICR") and the Office of Diversity, Inclusion, and Community Relations ("Office" or "ODICR").

Valuing diversity, ~~and inclusion, and equity~~ in and for the Brookline community, the Commission, in coordination with the Office, aims to support a welcoming environment by encouraging cooperation, tolerance, and respect among and by all persons who come in contact with the Town of Brookline ("Town"), including residents, visitors, persons passing through the Town, employers, employees, and job applicants, and by advancing, promoting and advocating for the human and civil rights of all through education, awareness, outreach and advocacy.

The Purpose of the Commission and the goal of the Town shall be to strive for a community characterized by the values of inclusion and equity. The Town believes that inclusion will provide opportunities and incentives to all who touch Brookline to offer their energy, creativity, knowledge, and experiences to the community and to all civic engagements, including town government; and that inclusion is, therefore, a critically important government interest of the Town.

Inclusion is defined as actively pursuing goals of including, integrating, engaging, and welcoming into the community all persons who come in contact with the Town regardless of their 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) (herein, "Brookline Protected Classes").

In striving to achieve the goal of inclusion, the Commission shall be guided by the following general principles: (1) the foundation of community is strong and positive community relations among and between all groups and individuals in the community, regardless of their membership in a Brookline Protected Class; (2) the substance of

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community is the recognition of human rights principles as applicable to all persons who come in contact with the Town; (3) justice in a community requires, at a minimum, monitoring and enforcing civil rights laws as they apply to all persons who come in contact with the Town; and (4) the commitment of the Town to these principles requires vigorous affirmative steps to carry out the word and spirit of the foregoing.

The Commission shall consist of fifteen (15) residents, who shall be called Commissioners.

Commissioners shall be appointed by the Select Board and shall hold office for a period of not more than three (3) years with terms of office expiring on August 31 of an appropriate year in a staggered manner so that approximately one-third (1/3) of the terms of the Commissioners will expire each year. A Commissioner whose term is expiring is expected to submit their renewal application to the Select Board not later than August 1 of the expiration year. The term of a Commissioner who does not submit a renewal application in a timely manner shall expire on August 31 of that year. The term of a Commissioner who submits a timely renewal application shall then be extended until notified by the Town Administrator that the renewal application has been acted upon. If the application is denied, the term of that Commissioner shall expire five (5) days after the date of the denial letter. If the application is approved, the term shall expire on August 31 of the year specified in the approval letter.

The Select Board may appoint additional non-voting associate members (in accordance with Section 3.1.5) as it determines to be necessary, which may include youth, i.e. persons under the age of 18, or persons who do not reside in Brookline but have a substantial connection to Brookline or to the Brookline Public Schools. The Select Board shall select one of its members to serve *ex officio* as a nonvoting member of the Commission. A quorum of the Commission shall consist of a majority of the serving members on the Commission, with a minimum of six.

The Select Board shall seek a diverse and inclusive group of candidates for the Commission, which may include youth. Candidates for Commissioner shall be qualified for such appointment by virtue of demonstrated relevant and significant knowledge, life experience, or training. The composition of the Commission shall include persons with the types of such knowledge, experience, or training necessary to enable the Commission to perform the duties assigned to it by this By-law. All Commissioners shall serve without compensation.

In the event of discontinuance of the service of a Commissioner due to death or resignation, such Commissioner's successor shall be appointed to serve the unexpired period of the term of said Commissioner. The Commission may recommend to the Select Board candidates to fill such vacancies.

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SECTION 3.14.2 APPOINTMENT, ROLES AND RESPONSIBILITIES OF THE DIRECTOR AND CHIEF DIVERSITY OFFICER

There shall be an Office of Diversity, Inclusion and Community Relations ("Office"), which shall be a unit of the Select Board's Office, and led by a professional in the field of civil rights human relations or similar relevant field of knowledge, who shall be known as the Director of the Office of Diversity, Inclusion and Community Relations ("Director"), and that person shall also serve as the Chief Diversity Officer ("CDO") for the Town. In the event of a vacancy in the position of Director, the Town Administrator, after consultation with the Commission, shall recommend to the Select Board a replacement with appropriate qualifications.

The Director shall offer professional and administrative support to the Commission in the administration of its functions and policies under this By-law or any other By-law giving the Commission responsibilities. If needed, the Director shall ask for additional assistance to carry out the Director's duties. ~~The Office shall be physically situated in whatever department the Town Administrator determines would most easily provide the Director any such assistance.~~

The Director shall be a Department Head/Senior Administrator and shall report to the Town Administrator.

The Director/CDO may bring a matter directly to the attention of the Select Board in the event that person believes, in their professional judgment, that a particular situation so warrants. The CDO works with the Human Resources Office to promote diversity and inclusion.

The CDO shall serve in the role of ombudsperson to provide information and guidance, informal dispute resolution, and manage the formal complaint process as described in Section 3.14.3 (B). ~~dispute resolution services to all persons who come in contact with the Town who feel that they have been discriminated against or treated unfairly due to their membership in a Brookline Protected Class, or in relation to Fair Housing or Contracting issues, interactions with businesses or institutions in the Town, or interactions with the Town and/or employees of the Town.~~

The CDO shall be responsible, with the advice and counsel of the Commission, the Human Resources Director, and the Human Resources Board, for the preparation and submission to the Select Board of a recommended diversity and inclusion policy for the Town, including equal employment opportunity and affirmative action, and recommended implementation procedures. The diversity and inclusion policy shall address hiring, retention and promotion, and steps to ensure a work environment that is friendly to diversity and inclusion. The policy shall also describe ways in which to increase diversity and inclusion at public and private institutions.

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~~The CDO shall respect the rights to privacy and confidentiality of all individuals to the fullest extent required by law. The CDO may attempt to mediate disputes/complaints and/or to refer such complainants to the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, the Office of Town Counsel, or such other body as the CDO deems appropriate. The Director/CDO shall report on these incidents to the Commission in terms of issues and trends but shall show full respect for the rights to privacy and confidentiality of the individuals involved to the fullest extent required by law. In the event that a person who comes in contact with the Town, except for employees of the Town, chooses to bring a complaint to the Commission after seeking the services of the CDO in said officer's role as an ombudsperson, the Director/CDO may discuss the case in general terms with the Commission (see Section 3.14.3(A)(v)).~~

~~The CDO shall also serve as an ombudsperson for employees of the Town if they feel they have been discriminated against or treated unfairly on the basis of membership in a Brookline Protected Class. The CDO may attempt to mediate such disputes or refer such employees to the Human Resources Office, the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, their union representative, and/or such other body that the CDO deems appropriate. The Director/CDO shall hold all such Town employee matters in confidence and shall respect the privacy rights of any such individuals but may discuss with the Commission, in general terms, the problems or issues that such individual cases, provided, however, doing so does not violate any person's rights to privacy.~~

SECTION 3.14.3 POWERS AND DUTIES OF THE COMMISSION

- (A) To implement the Mission of the Commission and the Office, the Commission, with the assistance of the Director and the Director's staff, shall have the following responsibilities:
 - (i) Strive to eliminate discriminatory barriers to jobs, education, and housing opportunities within the Town and work to increase the capacity of public and private institutions to respond to discrimination against individuals in the Town based on their membership in a Brookline Protected Class;
 - (ii) Enhance communications across and among the community to promote awareness, understanding and the value of cultural differences, and create common ground for efforts toward public order and social justice;
 - (iii) Work with the Select Board, the Town's Human Resources Office, the School Committee, and other Town departments, commissions, boards, and committees to develop commitments and meaningful steps to increase diversity and inclusion, and awareness of and sensitivity to civil and human rights in all

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departments and agencies of Town government;

- (iv) Provide advice and counsel to the CDO on the preparation of a diversity and inclusion policy for recommendation to the Select Board, including equal employment opportunity and affirmative action procedures, or amendments or revisions thereto, and make recommendations ~~suggestions~~ through the CDO to the Human Resources Director, the Human Resources Board, and the School Committee on the implementation of the diversity and inclusion policy;
- (v) Receive complaints of discrimination against individuals based on their membership in a Brookline Protected Class as described in 3.14.3 (B);
- (vi) ~~Receive Complaints Against the Town, directly or through the CDO, against the Town, its employees, agencies, or officials concerning allegations of discrimination or bias from all persons who come in contact with the Town, except Town employees (see Section 3.14.2), and after notifying the Town Administrator, the Commission shall (1) investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action to the Select Board, Library Trustees or Moderator as appropriate within 90 days of receipt of the complaint. The Commission/CDO, may in addition provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies. This By-law does not preclude any complainant from alternatively or additionally using other complaint procedures, such as the Police Department's Civilian Complaint Procedure or the Human Resources Office's procedures;~~
- (vii) ~~Receive Complaints Against the Public Schools of Brookline, directly or through the CDO, against the Public Schools of Brookline, its employees, agencies, or officials concerning allegations of discrimination or bias from all persons who come in contact with the Schools, except school employees, and, after notifying the Superintendent of Schools, the Assistant Superintendent for Human Resources, and/or the School Committee of the complaint, the Commission shall (1) investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action to the Superintendent and/or School Committee as appropriate within 90 days of receipt of the complaint. The Commission/CDO, may in addition provide the complainant with information on complainant's options regarding dispute resolution and the boards, agencies, or courts to which the complainant may file a complaint. The Public Schools of Brookline are encouraged to engage the expertise and/or resources of the CDO/Commission~~

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~~when pursuing resolution of any such complaints and/or when revising policies and procedures relative to diversity and inclusion.~~

- ~~(viii) Receive Other Complaints from any person who comes in contact with the Town, concerning allegations of discrimination or bias against a member of a Brookline Protected Class. After receiving such a complaint, the Commission shall (1) investigate the complaint by interviewing the complainant and any witnesses, (2) prepare written findings, and (3) recommend appropriate action to the Select Board within 90 days of receipt of the complaint. The Commission/CDO may in addition provide the complainant with information on complainant's options to bring proceedings at the Massachusetts Commission Against Discrimination or other appropriate federal, state, or local agencies.~~
- ~~(ix) The Commission shall develop, to the extent permissible by law, a log for the complaints referred to in subsections (v), (vi) above, provided that such publication contains public record information only and does not violate anyone's right to privacy, and the Commission shall compile and maintain statistical records regarding the nature of complaints, types of incidents, number and types of complaints, and other pertinent information, without identifying specific individuals, and include such information in the annual report filed with the Board pursuant to Section 3.14.6 of this By-law.~~
- ~~(x) Develop official forms for the filing of complaints under paragraphs (v) and (vi) above and also procedures for the receipt of such complaints and follow-up by the Commission to the extent not inconsistent with the procedures set forth in paragraphs (v) and (vi);~~
- ~~(xi) Carry out the responsibilities and duties given to the Commission by rules or regulations, if any, promulgated under Section 3.14.4 of this By-law in relation to its Fair Housing responsibilities, as authorized by law, under By-law 5.5;~~
- ~~(xii) With respect to any complaints or patterns of complaints involving the civil or human rights of any persons who come in contact with the Town, work with the CDO, in such officer's role as ombudsperson, to facilitate changes that will reduce and eliminate violations of rights;~~
- ~~(xiii) Institute and assist in the development of educational programs to further community relations and understanding among all persons in the Town, including Town employees;~~
- ~~(xiv) Serve as an advocate for youth on issues arising in the~~

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schools and the community, concerning diversity, ~~and~~ inclusion, and equity, and encourage public and private agencies to respond to those youth needs.

- (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 may be made by persons or organizations against the Town, its employees, agencies, or officials or against another adult 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. 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 state or federal law (including, but not limited to, Title IX).
- (i) The CC shall work with the CDO to provide reasonable accommodations and translators if needed for individuals with limited English proficiency or other communication or access issues.
- (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, i.e., individuals in groups historically excluded due to their membership in a protected class. 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. Members of the CC will receive training approved by the Office of Town Counsel.
- (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 of the Commission, the CC, the CDO, or the staff member within the ODICR, but shall be delivered to the CDO for logging in and review 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. **Complaints must be sworn.** 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

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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. A copy of the complaint shall also be promptly given to the respondent who shall have thirty (30) days from the date received to file an answer with the CC. Complaints must be received within three hundred (300) days of the latest discriminatory act on which the complaint is based or the date on which the complainant discovers that the act was discriminatory, including pendency of collective bargaining mandated grievance processes and principles of equitable tolling, and the CC may also extend the deadline for other good cause shown, if requested before the deadline passed; otherwise, if the complainant can demonstrate excusable neglect.

- (iv) The CDO shall, using written and published criteria developed with the CC, review each complaint to determine whether the facts as alleged by the complainant would plausibly suggest that the acts complained about constitute discrimination; if so, the complaint will be referred to the CC. This plausibility review shall be completed in thirty (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 case determination or if an extension is necessary.
- (v) If the CDO determines that the complainant has not established a case of discrimination, the complainant has forty five (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 thirty (30) days of receipt of the appeal.
- (vi) 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, and the CDO or its designee will designate which particular rule set shall apply. 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.
- (vii) If the CDO's initial review or the complainant's appeal to the CC results in a determination that the case 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 CC shall respect the rights to privacy and confidentiality of all**

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individuals to the fullest extent required by law. 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 to 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)(x).

- (viii) The complainant or respondent may appeal the results of the investigation within forty five (45) days of receiving the investigation report. If appealed by either party, there will be an appeal hearing before a panel of up to three (3) members of the CC who are chosen by its Chair and were not the original member conducting the investigation and the hearing shall be held within thirty (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)(x). The CC shall adopt and publish rules of procedure for its appeal hearings.
- (ix) 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 as witnesses in civil cases before the courts. Town departments and agencies shall cooperate as described in Section 3.14.5.
- (x) 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 thirty (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 written findings of fact and recommendations to the Select Board or School Committee.

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- (b) If the respondent is a person or organization not described in subparagraph (a) above the CC may (through the Chief Diversity Officer) issue a notice of violation to the respondent. To the extent the law allows, the CC may additionally 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.
- (xi) 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, nor may they retaliate against any associates of said person. A person may not intimidate a witness, complainant, or respondent in a proceeding before the Commission.
- (xii) 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 into contact with the Town as reflected in the complaints or pattern of complaints filed with the CC.
- (xiii) The CDO shall develop 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.
- (C) To carry out the foregoing responsibilities, the Commission is also authorized to work with community organizations, government and nonprofit agencies, educational institutions, persons with relevant expertise, and others to:
- (i) Develop educational programs and campaigns to increase awareness of human and civil rights, advance diversity and inclusion, eliminate discrimination, and ensure that the human and civil rights of all persons are protected and assist in the development of educational programs to further community relations and understanding among all people, including employees of all departments and agencies within the Town;
- (ii) Conduct or receive research in the field of employment discrimination, human rights, and human relations and issue reports and publications on its findings or, where appropriate, submit local or state-wide proposed legislation after ~~approval by the Select Board~~ and review by Town Counsel, to further human and civil rights of all persons who come in contact with the Town,

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provided that the Commission shall evaluate all such research conducted or received for its relevance and validity and for its openness to diverse viewpoints and perspectives;

- (iii) Receive and review information on trends and developments in youth research, services, and programs, both generally and as they relate to youth who are members of a Brookline Protected Class, and consider the applicability of such research, services, or programs to Brookline, provided that the Commission shall evaluate all such research conducted or received for its relevance and validity and for its openness to diverse viewpoints and perspectives;
- (iii) Do anything else deemed appropriate in the furtherance of its general duties and that are not inconsistent with its Mission, the State Constitution and laws, or the Town By-laws.
- (C) At least every two years, the Commission shall prepare written organizational goals ~~for the Commission~~ ("Commission's Goals") that are (i) specific, (ii) measurable, (iii) attainable with the resources and personnel of the Commission, (iv) relevant to the mission of the Commission, (v) designated as either short term or long term, and (vi) capable of being evaluated on a continuing basis and at the next goal setting point. The Commission's Goals shall be submitted to the Select Board at a public meeting and posted on the Town's website. The Commission shall receive and consider the comments of the Select Board at the public meeting and shall also receive and consider written comments from the community on the Commission's Goals.

SECTION 3.14.4 RULES AND REGULATIONS

In order to carry out the purposes and provisions of this By-law, the Commission, with the approval of the Select Board, after review by the Town Counsel, shall adopt procedural rules and regulations as necessary to guide it in carrying out its responsibilities. Such rules and regulations shall require that actions by the Commission be taken by a quorum or larger vote of the Commissioners and shall include procedures for holding regular public meetings, including at least one public hearing annually to apprise the public on the status of civil rights, diversity, inclusion and community relations in the Town and to hear the concerns of the public on those issues. The Commission may also establish procedures and rules and regulations to carry out its responsibilities with respect to applicable civil rights laws and Fair Housing (see Town Fair Housing By-law, Section 5.5), with the approval of the Select Board, after review by Town Counsel. Such rules and regulations may further provide for the governance of the Commission with respect to matters such as the appointments of committees as necessary to deal with specific community issues or concerns.

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SECTION 3.14.5 INFORMATION, COOPERATION, AND DIALOGUE

~~The Commission shall notify the Town Administrator of all complaints it records. In the event that such complaints fall within the purview of the Superintendent of Schools, the Superintendent shall also be notified. All departments and agencies in the Town shall cooperate fully with the Commission's reasonable requests for information concerning such complaints and when appropriate engage with the Commission in a dialogue on them respond to questions and provide information and feedback. All such requests and dialogue shall respect and protect, to the fullest extent possible, the privacy of all involved and shall comply with all local, state and federal laws.~~

The Director of Human Resources shall annually present a report to the Commission concerning the Town's statistics on employment diversity in Town departments and staff, as well as the efforts of the Town to increase the employment diversity of Town departments and staff. The School Superintendent and the Library Director, or their designees, shall annually provide a report to the Commission on their statistics on employment diversity, including but not limited to the most recently completed EEO-5 form. The Police Chief shall annually present a report to the Commission on ~~other~~ police matters that touch on the Commission's mission. The Commission may respond to such reports through dialogue and/or written reports; and all Town departments, including the Brookline Public Schools, are encouraged to cooperate with the Commission's reasonable requests for information. ~~as it reasonably requests.~~

SECTION 3.14.6 REPORT

With the assistance of the Director, the Commission shall submit an annual report to the Select Board, the School Committee, and the Board of Library Trustees detailing its activities and the results thereof. This report shall include (i) a review of the implementation of the diversity and inclusion policy by the Town, (ii) the Commission's Goals and a report on the extent to which the goals have been achieved to that point, (iii) a review of reports received by the Commission from the Director of Human Resources, the School Superintendent, the Library Director, and other Town departments or agencies, (iv) a narrative discussion of any impediments to the implementation and achievement of the Commission's Goals and its diversity and inclusion policy, and (v) recommendations of ways that such impediments could be removed. A synopsis of such report shall be published as part of the Annual Report of the Town.

SECTION 3.14.7 FIVE YEAR REVIEW

Beginning no later than July 1, 2019 and at least every five (5) years thereafter, the Commission shall review this By-law and any other related Town by-laws, in consultation with other pertinent

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departments, and propose changes if necessary, by preparation of appropriate Warrant Articles for consideration by Town Meeting.

~~SECTION 3.14.8 EFFECTIVE DATE OF DECEMBER 12, 2019 AMENDMENTS~~

~~The amendments, as indicated in strikethrough, bold and underlined, adopted on December 12, 2019, become effective July 1, 2021.~~

SECTION 3.14.8 SEVERABILITY

The provisions of this By-law shall be deemed to be severable. Should any of its provisions be held to be invalid or unconstitutional, the remainder shall continue to be in full force and effect.

SECTION 3.14.9 RESOLUTION OF CONFLICTING PROVISIONS

In case of any conflict between this By-law and other By-laws, the Provision(s) last adopted by Town Meeting shall prevail.

SECTION 3.14.10 APPLICATION OF THIS BY-LAW

Should any remedies in this By-law conflict with grievance or dispute resolution procedures in collective bargaining agreements with the Town's unions, the provisions of the collective bargaining agreements shall apply so long as all members of Brookline Protected Classes are protected.

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Submitted by Sandy Batchelder on behalf of the CDICR, with Mariah Nobrega and Deborah Brown. Contact emails: sbatch@comcast.net, mariah.nobrega@gmail.com, deborah.brown1@comcast.net

To see if the Town will amend the Town's General By-laws 5.5, 10.2 and 10.3 as follows (language to be stricken appearing in ~~strikeout~~, language to be added appearing in underline):

ARTICLE 5.5 FAIR HOUSING BY-LAW

SECTION 5.5.1 POLICY OF THE TOWN OF BROOKLINE

It is hereby declared to be the policy of the Town of Brookline ("Town") that all members of Brookline Protected Classes, as defined in Section 3.14.1 of this By-law, shall have equal access to housing accommodations within the Town. Further, it is the policy of the Town to encourage and bring about mutual understanding and respect among all persons in the Town by the elimination of prejudice and discrimination in the area of housing.

SECTION 5.5.2 EXERCISE OF POLICE POWER

This By-law shall be deemed an exercise of the police power of the Town for the protection of the public welfare, prosperity, health and peace of its people.

SECTION 5.5.3 DEFINITION OF TERMS

"Commission" means the Town's Commission for Diversity, Inclusion and Community Relations, its agents and employees.

To "discriminate" means to design, promote, implement or carry out any policy, practice or act which by design or effect segregates, separates, distinguishes or has a disproportionate impact on one or more members of Brookline Protected Classes.

"Person" means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers and the Town of Brookline and all boards, commissions, offices, and agencies thereof.

"Housing Accommodation" means any building or structure or portion thereof or any parcel of land, developed or undeveloped, which is occupied or to be developed for occupancy as the home, or residence for one or more persons.

"Disability", which includes the term "Handicap", is any person's physical or mental impairment that substantially limits one or more major life activities, or is regarded as having such an effect or having had such an effect.

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"Age" includes any duration of time since an individual's birth of greater than 40 years.

SECTION 5.5.4 UNLAWFUL HOUSING PRACTICES

It shall be an unlawful housing practice:

- (a) for any owner, lessee, sub-lessee, assignee, managing agent, real estate agent, or other person having the right to sell, rent, lease, or manage a housing accommodation or an agent of any of those:
1. to discriminate or directly or indirectly make or cause to be made any written or oral inquiry concerning the membership in a Brookline Protected Class of any prospective purchaser, occupant, or tenant of such housing accommodations;
 2. to discriminate or directly or indirectly to refuse to sell, rent, lease, let or otherwise deny to or withhold from any person, such housing accommodation because of membership in a Brookline Protected Class;
 3. to discriminate or to directly or indirectly print or publish or cause to be printed or published, circulated, broadcasted, issued, used, displayed, posted, or mailed any written, printed, painted or oral communication, notice or advertisement relating to the sale, rental, lease or let of such housing accommodation which indicates any preference, denial, limitation, specification, qualification, or discrimination because of membership in a Brookline Protected Class;
 4. to directly or indirectly discriminate against any person because of membership in a Brookline Protected Class in the terms, conditions or privileges of the sale, rental, lease, or let of any such housing accommodation or in the furnishing of facilities or services in connection therewith.
- (b) for any person to whom application is made for a loan or other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured:
1. to discriminate or to directly or indirectly make or cause to be made any written or oral inquiry concerning the membership in a Brookline Protected Class of any person seeking such financial assistance, or of existing or prospective occupants or tenants of such housing accommodation;

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2. to discriminate directly or indirectly in the terms, conditions or privileges relating to the obtaining or use of any such financial assistance because of membership in a Brookline Protected Class;
 3. to discriminate or to directly or indirectly deny or limit such application for financial assistance on the basis of an appraiser's evaluation, independent or not, of the property or neighborhood under consideration, when such evaluation is based on membership in a Brookline Protected Class.
- (c) for any person, agent, firm, corporation or association whether or not acting for monetary gain, to directly or indirectly induce, attempt to induce, prevent or attempt to prevent the sale, purchase, rental, or letting of any housing accommodation by:
1. implicit or explicit representations regarding the existing or potential proximity of real property owned, used or occupied by a member or members of a Brookline Protected Class;
 2. implicit or explicit representations regarding the effects or consequences of any such existing or potential proximity including, but not limited to, the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other facilities;
 3. implicit or explicit false representations regarding the availability of suitable housing within a particular neighborhood or area, or failure to disclose or offer to show all properties listed or held for sale, rent, lease, or let within a requested price range, regardless of location, on the basis of membership in a Brookline Protected Class.
- (d) except where based on a valid affirmative action program or record keeping or reporting requirement approved by any government or adopted pursuant to a court decree for any person, agent, manager, owner, or developer of any apartment or housing unit, complex or development, whether commercial or residential:
1. to directly or indirectly make or keep a record of any applicant's, prospective tenant's or existing membership in a Brookline Protected Class;
 2. to use any form of housing or loan application which contains questions or entries directly or indirectly pertaining to membership in a Brookline Protected Class;
 3. to establish, announce or follow a pattern, practice, or policy of denying, excluding or limiting housing

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accommodations by any means whatsoever because membership in a Brookline Protected Class.

- (e) for any person to discriminate in any manner against any person or to otherwise deny or to withhold from such person housing accommodations because said person has opposed any practice forbidden by this By-law or has made a charge, testified, or assisted in any manner in any investigation or proceedings under this By-law;
- (f) for any person, whether or not acting for monetary gain, to aid, abet, incite, compel or coerce the performance of any act declared by this By-law to be an unlawful housing practice, or to obstruct or prevent any person from complying with the provisions of this By-law or any regulations or orders issued thereunder, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful housing practice.

SECTION 5.5.5 EXERCISE OF PRIVILEGE - EXEMPTIONS

Notwithstanding anything herein contained, the following specific actions shall not be violations of this By-law:

1. for a religious organization or institution to restrict any of its housing accommodations which are operated as a direct part of religious activities to persons of the denomination involved;
2. for the owner of a housing facility devoted entirely to the housing of individuals of one gender, to restrict occupancy and use on the basis of that gender or gender identity;
3. the operation or establishment of housing facilities designed for the exclusive use of persons with disabilities and/or seniors or the establishment of programs designed to meet the needs or circumstances of persons with disabilities and/or seniors, or self-contained retirement communities of at least twenty acres in size a minimum age requirement for residency of at least fifty-five years;
4. the operation or establishment of housing facilities owned by an educational institution and designed and used for the exclusive use of students of that particular institution.

SECTION 5.5.6 COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS

This By-law shall be administered by the Commission for Diversity, Inclusion and Community Relations. The Commission shall have all powers given to it under other Town By-laws, as well as those given to

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it by this By-law. All persons who wish to file complaints for violations of this Article 5.5 shall follow the process outlined in 3.14.3 (B). The Commission may adopt rules and regulations consistent with this By-law, By-law 3.14 and the laws of the Commonwealth to carry out the policy and provisions of this By-law and the powers and duties of the Commission outlined in By-law 3.14.

~~SECTION 5.5.7 FUNCTIONS, POWERS AND DUTIES OF THE COMMISSION~~

- (a) All persons who wish to file complaints for violations of this Article 5.5 shall be strongly encouraged to refer their complaints to the Chief Diversity Officer for assistance in resolving the complaint. If for good cause shown to the CDO or to the Commission's Complaint Screening Committee, the complainant does not wish to refer the complaint to the CDO, or if the CDO requests recusal, the complaint shall then be handled according to the procedures developed under Section 3.14.3(A) and approved by the full Commission, with the approval of the Select Board, after review by Town Counsel. Complaints against the Town or its employees shall follow the procedures developed for 3.14.3(A)(v) = Complaints Against the Town; complaints against other persons, groups, entities or businesses in the Town shall follow the procedures developed for 3.14.3(A)(vii) = Other Complaints.
- (b) Whenever the Commission receives a complaint that is or appears to be within the jurisdiction of the Massachusetts Commission Against Discrimination hereinafter "MCAD", the Commission shall inform the complainant of their right to file a complaint at the MCAD with the Commission's assistance.
- (c) In addition to the aforementioned complaint-processing responsibilities, the Commission shall have the following additional functions, powers and duties:
1. to make studies and survey and to issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination in housing against persons who are members of a Brookline Protected Class.
 2. to develop courses of instruction for presentation in public and private schools, public libraries and other suitable places, devoted to eliminating prejudice, intolerance, bigotry and discrimination in housing and showing the need for mutual respect and the achievement of harmonious relations among various groups in the Town of Brookline.
 3. to render each year to the Select Board a full report of all the Commission's activities and recommendations regarding this

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~~By-law:~~

- ~~4. to create such committees from the members of the Commission as, in the Commission's judgment, will best aid in effectuating the policy of this By-law;~~
- ~~5. to enter into cooperative working agreements with federal, state and other municipal agencies, and to enlist the cooperation of the various racial, religious and ethnic groups, civic and community organizations and other groups in order to effectuate the policy of this By-law with respect to Brookline Protected Classes.~~

~~SECTION 5.5.8 — RULES, REGULATIONS AND PROCEDURES OF COMMISSION~~

~~The Commission may adopt rules and regulations consistent with this By-law and the laws of the Commonwealth to carry out the policy and provisions of this By-law and the powers and duties of the Commission.~~

~~Any charge filed under this By-law must be filed within 180 days of the alleged act of discrimination.~~

~~All Commission records shall be public except those that are necessary to insure privacy rights under other local, state or federal laws and those records that must be kept confidential in compliance with laws and rules of evidence.~~

~~SECTION 5.5.9 SEVERABILITY~~

~~If any provision or section of this By-law shall be held to be invalid, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this By-law, which shall remain in full force and effect.~~

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ARTICLE 10.2 PROSECUTIONS AND ENFORCEMENT

The provisions in Parts V, VI, VII and VIII of the by-laws of the Town of Brookline shall be enforced and violations prosecuted by any police officer of the town. In addition, enforcement and prosecution of the following by-laws and articles shall be by the following department head or their designees:

<u>DEPARTMENT HEAD</u>		<u>ARTICLE</u>
BUILDING COMMISSIONER		
Part V-Private Property	Articles	5.2, 5.3, 5.4, 5.6, 5.7, 5.8
Part VI-Public Property	Articles	6.1, 6.5, 6.9, 6.10
Part VII-Streets & Ways	Articles	7.3, 7.5, 7.7, 7.8, 7.9
Part VIII-Public Health & Safety	Articles	8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.13, 8.14, 8.15, 8.16,8.37
COMMISSIONER OF PUBLIC WORKS		
Part VI-Public Property	Articles	5.7, 6.1, 6.2, 6.3, 6.4, 6.5, 6.9
Part VII-Streets & Ways	Articles	7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10,7.11
Part VIII-Public Health & Safety	Articles	8.2, 8.6.7,8.8 8.14,8.15,8.16 , 8.18,8.24,
DIRECTOR OF HEALTH & HUMAN SERVICES		
Part V-Private Property	Articles	5.1, 5.2, 5.4, 5.5, 5.7
Part VI-Public Property	Articles	6.2, 6.6
Part VII-Streets & Ways	Articles	7.1, 7.5
Part VIII-Public Health & Safety	Articles	8.1, 8.2, 8.3, 8.4, 8.6, 8.7, 8.8, 8.9,

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8.10,8.11,
8.12,8.13,
8.14, 8.15,
8.16, 8.22,
8.23, 8.32,
8.37, 8.38

FIRE CHIEF

Part VIII - Public health & Safety Articles 8.37, 8.38

PRESERVATION COMMISSION

Part V-Private Property Articles 5.3, 5.6

COMMISSION FOR DIVERSITY, INCLUSION AND COMMUNITY RELATIONS

Part III-Executive Article 3.14

Part V-Private Property Article 5.5

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ARTICLE 10.3

NON-CRIMINAL DISPOSITION

A violation of any provision of these by-laws, the violation of which is subject to a specific penalty under Section 10.1 or in the specific provision which has been violated, except when otherwise provided by law, or any rule or regulation of any municipal officer, board or department may be dealt with as a non-criminal offense in accordance with the provisions of General Laws, Chapter 40, section 21d. If not subject to a specific penalty in the following table, each violation shall be subject to a specific penalty of fifty (\$50.00) dollars for each offense, unless a different penalty is provided in the specific by-law, rule or regulation provision being enforced. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense hereunder. Violations of this Article 10.3 may be enforced by any police officer of the town, by the department head or their designee as set forth with particular reference to specific articles in Article 10.2, above, and, when a violation involves a rule or regulation of any municipal officer, board or department, by that municipal officer or by that board or the head of that department, by their designee, and in all instances, in accordance with the requirements set forth in General Laws, Chapter 40, section 21d.

TABLE OF SPECIFIC PENALTIES UNDER ARTICLE 10.3

<u>Article 3.14</u>	<u>Commission for Diversity, Inclusion and Community Relations and Office of Diversity, Inclusion and Community Relations</u>		
	<u>Section 3.14.3 (B)</u>	<u>Penalties</u>	<u>\$300.00</u>
Article 5.1	Alarm Systems		
	Section 5.1.9	False Alarms	\$100.00
	Section 5.1.10	Penalties	\$100.00
Article 5.8	Sign By-Law		

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	Section 5.8.9	Penalty For Violation	\$100.00
Article 6.2	Alcoholic Beverages On Public Property		
	Section 6.2.2	Penalty	\$100.00
Article 6.3	Grass Borders		\$ 75.00
Article 6.4	Damage To Trees		\$100.00
Article 6.5	Defacing Public Grounds		\$ 75.00
Article 6.6	Discharging Firearms		\$100.00
Article 7.1	Alcoholic Beverages		\$100.00
Article 7.3	Construction In Streets		
	Section 7.3.3	Penalty	\$100.00
Article 7.6	Newsrack Regulation		
	Section 7.6.5	Penalty	\$ 25.00
Article 7.7	Removal of Snow and Ice From Sidewalks		
	Section 7.7.5 Penalties		
	For Section 7.7.1 and 7.7.2		
	First Violation		\$100
	Second Violation		\$150
	Third and Subsequent Violations		\$200For
	Section 7.7.3		
	First Violation		\$50
	Second and Subsequent Violations		\$100For
	Section 7.7.4		\$250
Article 7.8	Removal Of Vehicles From Streets		\$ 25.00
Article 7.9	Snow Parking Ban		\$100.00

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Article 8.3	Dwelling Houses Used In Common	\$100.00
Article 8.5	Disorderly Behavior	
	Section 8.5.5 Specific Penalty	\$100.00
Article 8.6	Dog Control	
	Section 8.6.9 Penalty	
	First Violation	\$ 15.00
	Second & Third Violations	\$ 25.00
	Fourth & Subsequent Violations	\$ 50.00
Article 8.7	Food Stores - Hours Of Operation	\$ 50.00
Article 8.8	Food Establishments Handling Of Refuse	\$100.00
Article 8.9	Toilet Facilities - Restaurants	\$ 50.00
Article 8.23	Tobacco Control	
	Section 8.23.5 Violations & Penalties	
For each violation under Article 8.23 -Three HundredDollars (\$300.00.		
Article 8.24	Water Supply Emergencies	
	Section 8.24.6 Penalties	
	First Violation	\$ 50.00
	Second & Subsequent Violations	\$100.00

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Article 8.25	Water System Backflow And Cross Connections		
	Section 8.25.6	Enforcement	\$100.00
Article 8.26	Stormwater Management		
	First Violation		\$100.00
	Second Violation		\$200.00
	Third and Subsequent Violations		\$300.00
Article 8.35	Drinking Water Access By-Law		
	Initial Violation		Warning
	First Offense		\$50.00
	Second and Subsequent Offenses		\$100.00

HEALTH DEPARTMENT REGULATIONS

Regulations Governing the Handling, Storage, Collection and Disposal of Waste

1. Violations and Penalties for Owners of Commercial Businesses, Corporations and Buildings Containing More Than Three Dwelling Units

First Violation	\$100.00
Second Violation	\$200.00
Third & Subsequent Violations	\$300.00
2. Violations and Penalties for Owners of Single, Two and Three Unit Dwellings

First Violation	\$20.00
Second Violation	\$35.00
Third & Subsequent Violations	\$50.00