

OFFERED BY COUNCILORS MINIARD CULPEPPER, EDWARD M. FLYNN,
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CITY OF BOSTON

IN THE YEAR TWO THOUSAND TWENTY SIX

**ORDINANCE TO AMEND THE BOSTON HUMAN
RIGHTS COMMISSION**

WHEREAS, The City Council Committee on Civil Rights, Racial Equity, and Immigrant Advancement conducted a public hearing on the future of the Boston Human Rights Commission, receiving testimony from civil rights advocates, former Human Rights Commissioners, and directors from sister-organizations who overwhelmingly identified the need for a transition from a research-based body to a hearing and enforcement agency; *and*

WHEREAS, Evidence presented during the hearing demonstrated that the current reliance on “study and outreach” has left residents without a local, accessible venue for the timely adjudication of discrimination claims, creating a gap in the City’s ability to provide immediate relief to complainants; *and*

WHEREAS, It was further established that the absence of formal discovery powers and a structured, public hearing process has historically limited the Commission’s ability to compel evidence and hold respondents accountable, necessitating a procedural modification that aligns Boston’s enforcement capabilities with the proven models of the Massachusetts Commission Against Discrimination and the Cambridge Human Rights Commission; *and*

WHEREAS, Testimony from the Equity Cabinet and community stakeholders highlighted that while outreach and education remain valuable, the protection of human rights in Boston requires a Commission empowered to adjudicate claims that provide equitable relief to those aggrieved by discriminatory practices; *and*

WHEREAS, The findings of the hearing conclude that the Boston Human Rights Commission chartering ordinance must be updated to ensure that the City’s commitment to equity is backed by clear, enforceable, and accessible paths to justice for every resident; **NOW, THEREFORE**

Be it ordained by the City Council of Boston as follows:

Section 1.

The City of Boston Code, Ordinances, Chapter 12-9.9 (B) is hereby amended by inserting the following language after the second sentence:

The seven (7) Commissioners shall rotate through designated roles to ensure the fair administration of justice. These roles include:

1. Reviewing Commissioner: One (1) Commissioner, designated by the Chair, shall have the authority to preside over Preliminary Hearings and issue orders to uphold, reverse, or remand investigative findings. To maintain impartiality, the Reviewing Commissioner shall not participate in any subsequent Public Hearing or Full Commission vote on the same matter.
2. Assigned Investigator: Under the direction of the Executive Director, the Assigned Investigator shall serve as the primary fact-finder for each authorized complaint. The Investigator's duties shall include but not be limited to fact-finding, convening and presiding over mandatory meetings of the parties, and submitting a comprehensive investigative report to the Executive Director, which shall serve as the basis for the Investigative Disposition.
3. Commission Mediator: The Commission shall designate a Mediator to facilitate the resolution of disputes following a finding of Probable Cause. The Mediator's duties shall include but not be limited to overseeing mandatory conciliation, maintaining confidentiality, and assisting the parties in drafting binding Conciliation Agreements for review by the Executive Director and final approval by the Commission.
4. Adjudicatory Panelists: The remaining four (4) Commissioners shall serve as members of the Full Commission and sit on three-member panels for Certification Conferences and Public Hearing reviews. When not assigned to the roles of Reviewing Commissioner, Investigator, or Mediator, these Commissioners shall focus on policy review and the final adjudication of cases that have not previously been reviewed.

Section 2.

The City of Boston Code, Ordinances, Chapter 12-9.10 (B) is hereby amended by inserting the following language after the second sentence:

The Executive Director shall report to the City of Boston Law Department.

Section 3.

The City of Boston Code, Ordinances, Chapter 12-9.11 is hereby amended by striking (A) and (D) in their entirety and replacing with the following:

(A) *Adjudicatory Primary Function.* The Commission shall serve as an administrative and adjudicatory body for the investigation, hearing, and resolution of complaints of discrimination. The Commission shall adopt internal rules of procedure that are consistent with, and provide no less due process than, M.G.L. c. 30A and 804 CMR 1.00.

(D) *Data-Driven Reporting.* The Commission shall publish an annual report to the Mayor and City Council. This report shall be based strictly on aggregated data compiled from complaints

received, including but not limited to: the number of filings, the protected classes involved, the types of alleged discriminatory practices, and the final disposition of cases.

Section 4.

The City of Boston Code, Ordinances, Chapter 12-9.11 is hereby amended by adding section (G) with the following language:

Inter-Agency Cooperation. The Commission shall prioritize working with the MCAD, EEOC, and the Boston Fair Housing Commission to ensure jurisdictional alignment and shall not duplicate the adjudicatory and administrative work.

Section 5.

The City of Boston Code, Ordinances, Chapter 12-9.12 (A) is hereby amended by inserting the following language after the fourth sentence:

Within thirty (30) days of filing, the Executive Director shall conduct a review to determine if the Commission has legal authority over the claims. If jurisdiction is lacking, a Lack of Jurisdiction (LOJ) order shall be issued immediately thereafter.

Section 6.

The City of Boston Code, Ordinances, Chapter 12-9.12 (B) is hereby amended by striking the current language and inserting the following:

Upon authorization of the complaint, the Executive Director shall serve the complaint upon the respondent via certified mail within seven (7) days. The respondent shall have twenty-one (21) days to submit a written Position Statement. Failure to file may result in a default finding, meaning that the allegations in the complaint may be taken as true for the purpose of the investigation. A respondent may move to vacate a default finding within seven (7) days of notice, provided they demonstrate good cause for the failure to file. The Reviewing Commissioner shall have the sole discretion to grant or deny such a motion. The complainant shall have fourteen (14) days from receipt of the Position Statement to file a written Rebuttal. The Reviewing Commissioner's decision shall be final for the purpose of the investigative phase.

Section 7.

The City of Boston Code, Ordinances, Chapter 12-9.12 (D) is hereby amended by striking the second sentence and inserting the following language:

Following an investigation, the Executive Director shall issue a written determination of Probable Cause (PC), Lack of Probable Cause (LOPC), or Lack of Jurisdiction (LOJ).

Investigative Process. The assigned Investigator may convene a mandatory meeting of both parties within sixty (60) days of filing to narrow facts; this conference is investigative and not a formal hearing.

The 10-Day Appeal. A Complainant may appeal an LOPC or LOJ finding within ten (10) days of receipt. The Commission shall then hold a Preliminary Hearing where the Complainant must

show that the determination was incorrect. The Preliminary Hearing shall be presided over by a Reviewing Commissioner (one of the seven Commissioners appointed under Section 12-9.9) who did not participate in the initial investigation. The Reviewing Commissioner may then uphold the finding, reverse it, or remand for further investigation. The Reviewing Commissioner's decision on the appeal shall be final for the purpose of the investigative phase.

Mandatory Conciliation. Upon a finding of Probable Cause, all parties must attend a mandatory conciliation session facilitated by a Commission Mediator. If a settlement is reached, the case is closed via a binding Conciliation Agreement.

Discovery and Certification. If conciliation fails, the Commission shall issue a Discovery Order. The parties shall conduct discovery in accordance with the technical requirements set forth in 12-9.12 (E).

Section 8.

The City of Boston Code, Ordinances, Chapter 12-9.12 is hereby amended by striking subsection (E) in its entirety and replacing it with the following:

Scope of Discovery. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter in the complaint, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any documents or tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought shall be inadmissible at a public hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Interrogatories. No party shall serve upon any other party as of right more than thirty (30) interrogatories, including interrogatories subsidiary or incidental to, or dependent upon, other interrogatories, however grouped or combined; but the interrogatories may be served in two (2) or more sets, as long as the total number of interrogatories served does not exceed thirty (30). All interrogatories shall be numbered consecutively. Each interrogatory shall be answered separately and fully in writing under the pains and penalties of perjury, unless it is specifically objected to, in which event the reasons for objection shall be stated in lieu of the answer; each answer or objection shall be preceded by the interrogatory to which it responds. General objections to interrogatories are prohibited. Each objection to an interrogatory shall be specific to that interrogatory and shall have a good faith basis. If a party refuses to answer an interrogatory, the party shall state and identify each objection asserted to justify the refusal to answer. If a party, after having asserted an objection, answers the interrogatory, the answer shall state either:

1. Notwithstanding the objection no information has been withheld from the answer; or
2. Information has been withheld from the answer because of the objection. Where information has been withheld from the answer, the objecting party shall describe the nature of the information withheld and identify each objection asserted to justify the withholding. The answers are to be signed by the person making them under the pains and penalties of perjury, the objections by the person or attorney making them. The party

upon whom the interrogatories have been served shall serve answers and objections, if any, within forty-five (45) days after the service of the interrogatories.

Requests for Production. The party upon whom the request is served shall serve a written response and copies of the responsive documents within 30 days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities shall be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If an objection is made to part of an item or category, the part shall be specified. Unless otherwise stipulated or ordered by the Commission:

1. A party shall produce documents as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request;

2. The producing party may produce copies of the documents, including by electronic means, provided that, if requested, the producing party affords all parties a fair opportunity to verify the copies by comparison with the originals;

3. If a request does not specify a form for producing electronically stored information, a party shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

4. A party need not produce the same electronically stored information in more than one form.

The written response accompanying production shall state either:

5. All responsive documents or things in the possession, custody, or control of the responding party have been produced;

6. After diligent search no responsive documents or things are in the possession, custody, or control of the responding party; or

7. A specific objection made to the request. When a specific objection is made, the response shall describe the nature of all responsive documents or things in the possession, custody, or control of the responding party that have not been produced because of the objection.

Depositions. A party desiring to take the deposition of any person upon oral examination shall include in the notice the time and place for taking the deposition, the name and address of each person to be examined and the manner in which the deposition shall be recorded. The notice of deposition shall be served at least fourteen (14) days prior to the date of the deposition, and the parties shall receive the same notice for third-party depositions. The parties shall also be given an opportunity to quash, prior to the service of a third-party subpoena. A party may name as a deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The named organization shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which they shall testify. The persons so designated shall testify as to matters known or reasonably available to the organization. If the corporation, partnership or association does business in Massachusetts, it must produce its designee(s) for deposition in Massachusetts. If a subpoena duces tecum is to be served on a person to be examined, the designation of the material to be produced as set forth in the subpoena, shall be attached to the notice.

The party requesting a deposition shall make all necessary arrangements for the taking and recording of depositions, including the cost thereof. The testimony at a deposition may be recorded by other than stenographic means. The party conducting the deposition shall ensure that the recorded testimony is accurate and trustworthy. All objections made at the time of the deposition shall be noted by the person taking the deposition. Evidence objected to shall be taken subject to the objection. Counsel for a witness or a party may not instruct a deponent not to answer except where necessary to assert or preserve a privilege or protection against disclosure, to enforce a limitation on evidence directed by the Commission or stipulated in writing by the parties, or to suspend the deposition for the purpose of bringing a motion to terminate or limit the examination where it is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party. Subject to valid objections to admissibility, depositions or any part thereof may be used for any purpose with respect to witnesses who are unavailable at the hearing or to contradict or impeach the credibility of witnesses who testify at public hearing. The Commission may order the filing of any deposition transcript with the Commission.

Admissions. A party may serve upon another party a written request for admission of the truth of matters within the scope of discovery that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents attached to the request. Each matter of which an admission is requested shall be separately set forth and is deemed admitted unless within thirty (30) days after its service, the party to whom the request is directed serves upon the party requesting the admission:

1. A written statement signed by the party under the pains and penalties of perjury denying the matter or setting forth in detail why it cannot truthfully admit or deny it; or
2. A written objection addressed to the matter, signed by the party or representative. If an objection is made, the reasons shall be stated.

When good faith requires that a party qualify the answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. A party may not give lack of information or knowledge as a reason for failure to admit or deny the request unless the party states that it has made reasonable inquiry and the information known or readily obtainable by such party is insufficient to enable the party to admit or deny. Each response shall be preceded by the request to which it responds. Any admission made is for the purpose of the pending case only and is not an admission for any other purpose nor may it be used in any other proceeding. The maximum number of admissions as of right shall be thirty (30).

Failure to Comply with Discovery. Failure to comply with discovery may result in any of the following orders from the Commission sua sponte or upon motion from a party:

1. An order to comply with discovery containing consequences for further noncompliance;
2. An order that matters upon which discovery is sought or any other designated facts shall be taken to be established for the purpose of supporting a claim or defense of the party seeking discovery;

3. An order refusing to allow the noncomplying party to support or oppose designated claims or defenses, or prohibiting them from introducing designated matters in evidence;
4. An order prohibiting a party from calling witnesses or introducing documents at the public hearing;
5. An order dismissing the action or immediate certification to public hearing pursuant to the Commission's rules of procedure; and
6. An order requiring the noncomplying party or the attorney advising the noncomplying party or both to pay monetary sanctions and reasonable expenses, including attorney fees and Commission expenses caused by the noncompliance, in accordance with Section 12-9.12 of this Chapter.

Following discovery, the Commission shall hold a Certification Conference to narrow the issues for the Public Hearing.

Certification. When the Commission determines that the public interest requires a certification of claims to public hearing, it shall issue a certification order in the name of the Commission pursuant to M.G.L. c. 151B, § 5.

Certification Process. The Commission may issue a certification order identifying the claims that shall be certified to public hearing. The Commission may schedule a conference pursuant to its rules of procedure prior to issuance of such order to determine which claims, if any, shall be certified to public hearing.

Certification Conference. The Commission shall serve notice of the certification conference upon all parties and counsel. The Commission may issue an order requiring written submissions by the parties in advance of the certification conference, and failure to provide all written submissions as ordered shall be cause for sanctions in accordance with Section 12-9.12 of this Chapter and the Commission's rules of procedure. The written submissions shall contain the following:

1. List of proposed claims to be certified to public hearing;
2. Affirmative defenses;
3. Parties, including definition of proposed classes;
4. Pending motions (e.g., discovery issues, motions for certification, motions for reconsideration of probable cause);
5. All relief sought, including any monetary and equitable relief and description of the bases on which damages are calculated;
6. Settlement efforts; and
7. Any other matter which in the judgment of the Commission is likely to expedite the preparation and presentation of the case.

Certification Authority. A panel of three (3) Commissioners shall preside over the Certification Conference to ensure that all discovery is complete and the issues for the Public Hearing are clearly defined.

Certification Order. The certification order shall be in writing, served upon all parties and counsel of record and may provide the following:

1. Certification of claims to be considered at a public hearing;
2. Certification of one or more questions of law to the Full Commission; and
3. Address any other matters the Commission deems appropriate in the public interest, including a denial of certification and reversal of the probable cause determination.

Section 9.

The City of Boston Code, Ordinances, Chapter 12-9.12 (J) is hereby amended by striking the current language and inserting the following:

Public Hearing. The Public Hearing shall be conducted by a presiding Hearing Officer in accordance with the standards of M.G.L. c. 30A, as it may be amended from time to time. The Commission shall be bound by the rules of privilege recognized in the Commonwealth and shall ensure the due process rights of all parties consistent with the most current state administrative standards.

Conduct. All parties, witnesses, counsel, and others present at a public hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. Where such standards are not observed, the Commission may take such action as it deems appropriate, including assessing sanctions against a non-complying person pursuant to Section 12-9.12 of this Chapter.

Request for Clarification. Upon written request of a party or by the Commission sua sponte, the complaint and certification order may be clarified. In the event there remains a dispute about which claims are certified to public hearing, the Commission may proceed to hear evidence on any and all claims presented and may amend the certification order to conform to the evidence established at the hearing.

Continuance. Any party requesting a continuance shall make such request in writing by motion pursuant to the Commission's rules of procedure. Continuances shall be granted only upon a showing of good cause. In any instance in which a continuance results in fees or costs to the Commission or another party, the party requesting the continuance may be required to incur such costs.

Settlement after Commencement of Public Hearing. If after the commencement of a public hearing, the matter in dispute before the Commission is settled between the parties and the settlement is acceptable to the Commission, it shall dismiss the matter.

Ex Parte Communications. In any proceeding held pursuant to the Commission's rules of procedure or in any appeal therefrom, no party or counsel shall communicate ex parte with the adjudicator for any reason on any matter related to the proceedings prior to the issuance of a final decision of the Commission pursuant to the judicial review and enforcement provisions of M.G.L. c. 151B.

Failure to Appear at Public Hearing. Whenever a party duly notified of the time and place of a public hearing fails to appear at the hearing either in person or by counsel, the party's default shall be entered on the record and notice of the default shall be served within ten (10) days of the entry of default. If the defaulting party is the complainant, the complaint may be dismissed. If the defaulting party is the respondent, the hearing shall be conducted on its scheduled date, and the complaint shall continue to have the burden of establishing liability and remedy notwithstanding the entry of default. Within ten (10) days of receipt of notice of entry of default, the defaulting party may petition the Commission to vacate the default and reopen the case upon a showing of good cause established through affidavit signed under the pains and penalties of perjury. The other parties may file a response to the request for removal of default within ten (10) days of receiving a copy of it. If the case is reopened, the party in default may be ordered to bear the reasonable costs incurred as a result of the default.

Transcript and Record of Public Hearing. The record of the public hearing shall consist of the exhibits and either an electronic recording or a transcript of the hearing. If a party arranges to have a stenographer at the public hearing, the stenographic record shall be the official record of the public hearing, the Commission shall not create an electronic recording, and the party arranging for the stenographer shall furnish the Commission at no charge with a certified copy of the transcript within ten (10) days of receipt of the transcript from the stenographer. If there is no stenographer at the public hearing, the Commission shall make an audio recording of the public hearing. A party desiring a copy of the recording shall make a request in writing to the Commission and may be required to pay the cost thereof. A transcription of the electronic record made by a party may be cited if the Commission and all parties agree to accept the transcription as the official record of the public hearing, with a party waiving any objection to the accuracy of such transcript if not made within twenty (20) days of its filing. The administrative record for the purpose of judicial review under M.G.L. c. 30A, § 14 shall be the record of public hearing in accordance with the Public Hearing provisions of this Chapter, together with the certification to public hearing, the complaint as amended, and any post-probable cause motions and orders disposing of such motions at issue in the complaint for judicial review.

Stipulations. Written stipulations of facts may be introduced in evidence, if signed by the persons sought to be bound thereby, or by their authorized representatives. Oral stipulations may be made on the record during the course of a public hearing.

Oral Argument. The Commission may allow a reasonable time to the parties for oral argument.

Public Hearing Decision. The Commission shall issue a decision in writing either dismissing the complaint or granting relief to the aggrieved party for the purposes of effectuating the laws under its jurisdiction, pursuant to M.G.L. c. 151B, § 5. The decision shall contain all findings of fact and conclusions of law necessary to address every claim certified to public hearing. The parties shall be notified in writing of their rights to appeal such decision to the Full Commission. A copy of the decision shall be served upon each party and counsel within seven (7) business days.

Full Commission Review. The Full Commission shall retain the final authority to approve Conciliation Agreements and issue Final Orders following a Public Hearing.

Section 10.

The City of Boston Code, Ordinances, Chapter 12-9.12 is hereby amended by adding section (Q) with the following language:

Civil Penalties and Remedial Orders. If the Commission finds that a respondent has engaged in an unlawful practice, it may levy a civil fine of up to three hundred dollars (\$300) for each violation. Each day of a continuing violation shall constitute a separate offense. The imposition of such fines shall not preclude the Commission from awarding punitive and compensatory damages, including emotional distress, out-of-pocket expenses, interest, and attorney fees and costs. A respondent may file a written appeal within fifteen (15) days of receipt of the civil penalties and remedial orders.

Section 11. Definitions.

“Commission Mediator” shall refer to a neutral third party, designated by the Executive Director, who facilitates a mandatory conciliation process between the Complainant and Respondent. The Mediator shall assist the parties in reaching a voluntary, binding settlement (Conciliation Agreement) but shall have no authority to impose a decision or testify in subsequent proceedings regarding the substance of the mediation.

“Good Cause” shall refer to a substantial and compelling reason, beyond the reasonable control of the party, that justifies a failure to meet a deadline or requirement. This includes but is not limited to: a documented medical emergency, a death in the immediate family, an act of nature, or a failure of the Commission to provide proper notice. Mere oversight, heavy workload, or internal administrative delays by a party or their counsel shall generally not constitute Good Cause.

“Lack of Probable Cause” shall refer to a determination made by the Commission, following an investigation, that there is insufficient evidence to support a reasonable belief that an unlawful practice has occurred. A Lack of Probable Cause finding shall result in the dismissal of the complaint, subject to the Complainant's right to a preliminary appeal.

“Lack of Jurisdiction” shall refer to a determination made by the Commission that the body does not have the legal authority to adjudicate the claims presented. This may be based on the expiration of the statute of limitations, the nature of the alleged act, the location of the occurrence, or the status of the parties involved.

“Position Statement” shall refer to a full and complete description of the respondent's positions in response to all allegations of the complaint. A Position Statement shall assert all jurisdictional and other defenses which the respondent wishes to raise.

“Probable Cause” shall refer to a determination made by the Commission, following an investigation, that there is sufficient evidence to support a reasonable belief that an unlawful practice has occurred or is occurring. A finding of Probable Cause is not a final adjudication on

the merits but a threshold determination that the matter warrants a public hearing or further formal proceedings.

“Quash” shall refer to a formal legal action taken by the Commission or a court to void or vacate a subpoena or order. A motion to quash is typically filed when a party believes a subpoena is overbroad, seeks privileged information, or was not properly served, thereby relieving the recipient of the legal obligation to comply with that specific request.

“Rebuttal” shall refer to a written statement filed by the Complainant in response to the Respondent’s Position statement. The Rebuttal serves to address, clarify, or contest the facts and legal arguments raised by the Respondent and must be filed within the timeframe established by these ordinances.

“Subpoena Duces Tecum” shall refer to a legal order requiring a person or entity to appear at a specific time and place to provide testimony and to bring with them specific documents, records, or other tangible evidence for use in an investigation or adjudicatory hearing.

“Sua Sponte” shall refer to an action taken by the Commission on its own motion or initiative, without a formal request or motion being filed by any of the parties involved in the case. This authority allows the Commission to address legal or procedural issues, such as jurisdictional defects or discovery non-compliance, as they arise to ensure the fair and efficient administration of justice.

Section 12. Severability.

The provisions of this ordinance are severable and if any provision, or portion thereof, should be held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the remaining provisions, which remain in full force and effect.

Section 13.

The provisions of this ordinance shall be effective immediately upon passage.

Filed on: August 26, 2026