



# Town of Brookline

## Massachusetts

Ben Kaufman, Town Clerk

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### SUBMISSION #2

June 6, 2025

To Whom It May Concern:

I, Ben Kaufman, Town Clerk of the Town of Brookline, duly qualified and acting as such and having custody of the records, hereby certify that the following actions were taken under Article #14 at the Annual Town Meeting called for Tuesday, May 27, 2025 at 7:00 P.M., adjourned to Wednesday, May 28, 2025, adjourned to Wednesday, June 4, 2025, adjourned to Thursday, June 5, 2025, and dissolved on Friday, June 6, 2025 at 5:00 P.M.

### ARTICLE 14

MOVED that the Town amends the Town's Zoning By-law to add a new section to Article IX, Administration and Procedure, as follows:

#### § 9.14 ADMINISTRATIVE REVIEW FOR REASONABLE ACCOMMODATIONS

##### 1. *Purpose*

The Town of Brookline is committed to upholding the rights of individuals with disabilities as guaranteed under the Fair Housing Act (FHA), 42 U.S.C. § 3601 et seq., the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., the Massachusetts Anti-Discrimination Law, G.L. c. 151B, § 4, and the Massachusetts Zoning Act, G.L. c. 40A, § 3 (collectively, "Fair Housing Laws").

These Fair Housing Laws require public entities to make reasonable accommodations in their land use and zoning regulations and practices to individuals with disabilities unless doing so would impose an undue financial or administrative burden on the municipality or fundamentally alter the nature of the service, program, or activity, as defined under 42 U.S.C. § 12112(b)(5)(A) and 28 C.F.R. § 35.130(b)(7)(i). They also require an interactive process in

which individuals with disabilities engage in a collaborative dialogue with public entities to identify and evaluate effective accommodations.

The purpose of this section is to establish a distinct, timely, and equitable process for reviewing reasonable accommodation requests under Fair Housing Laws. This section ensures that such requests are handled efficiently, with respect for privacy, and without requiring public hearings or undue scrutiny.

## 2. *Definitions*

As used in this section, the following terms have the following meanings:

- a. **Accommodation:** Any modification or adjustment to the requirements of this Bylaw that provides an individual with a disability an equal opportunity to use and enjoy their property.
- b. **Reasonable:** An accommodation is considered reasonable unless it: (1) imposes an undue financial or administrative burden on the municipality, as defined in 42 U.S.C. § 12112(b)(5)(A); or (2) fundamentally alters the nature of the zoning or permitting program, as defined in 28 C.F.R. § 35.130(b)(7)(i).
- c. **Necessary:** An accommodation is considered necessary if it directly alleviates a barrier preventing an individual with a disability from enjoying or using their property on an equal basis with others, as supported by 28 C.F.R. § 35.130(b)(7)(i).
- d. **Disability:** Defined as per the Americans with Disabilities Act, 42 U.S.C. § 12102, and G.L. c. 151B, § 1.

## 3. *Notice to the Public of Availability of Accommodation Process*

Notice of the availability of a reasonable accommodation shall be prominently displayed at public information counters in the planning and building departments of the Town, advising the public of the availability of the procedure for eligible individuals. Forms for requesting reasonable accommodations shall be available to the public on the Town's Building Department website and in the Building Department.

## 4. *Submission of Requests*

Any person with a disability may request a reasonable accommodation from the requirements of this Bylaw, when the application of this Bylaw acts as a barrier to fair housing opportunities. Such a request may be made by the individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities.

The request for a reasonable accommodation with respect to housing shall be filed with the Building Commissioner in writing and may be submitted in person, by mail, or electronically. The request shall provide the following information:

- a. Name and address of the individual(s) or agent requesting the reasonable accommodation;
- b. Address of the property for which accommodation is requested, and name(s) of the property owner(s) of that property;

- c. Description of the requested accommodation and the section(s) of the Bylaw for which relief is sought (if known); and
- d. Reason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling.

If an individual needs assistance in making the request for reasonable accommodation, the Building Department will provide assistance to ensure that the process is accessible.

5. *Reviewing Authority.*

- a. The Building Commissioner shall review requests for reasonable accommodation and shall issue a written decision on a request within thirty (30) days of the application. The Building Commissioner may grant, grant with modification, or deny the request for reasonable accommodation, and shall explain the basis of their decision in detail, based on the criteria in Section 7.
- b. The Building Commissioner shall initiate and engage in an interactive process with the applicant forthwith upon receipt of a request for reasonable accommodation. This process shall involve a timely, good-faith dialogue to identify the barriers at issue, explore possible accommodations, and consider the applicant's input regarding necessity and effectiveness, consistent with federal and state disability law.
- c. Upon receipt of the application, the Building Commissioner shall review the application forthwith to determine whether comments from any Town Boards, Commissions, or Departments would assist in reviewing the application. Upon determining that input from such Board, Commission, or Department would be directly relevant to assessing whether the requested accommodation constitutes an undue burden or fundamental alteration, the Building Commissioner shall transmit the application to that Board, Commission, or Department. If the proposed accommodation would require demolition as defined in Town By- Law Article 5.3, the Building Commissioner shall transmit the application to the Preservation Commission. However, the Building Commissioner shall not transmit application materials to any department if those materials are not pertinent to that department's review of the application. Each department receiving the application shall provide any comments and recommendations to the Building Commissioner within twenty-one (21) days. Such comments and recommendations shall be limited to the criteria set forth in Sections 7c and 7d.
- d. If necessary to reach a determination on the request for reasonable accommodation, the Building Commissioner may request additional information from the applicant consistent with fair housing laws, specifying in detail the information that is required. In the event that a request for additional information is made, the thirty (30) day period to issue a decision is stayed until the applicant responds to the request.
- e. Before granting a request with a modification, the Building Commissioner shall notify the applicant of the contemplated modification and rationale and provide the

applicant an opportunity to respond, at the applicant's election, in writing or in a meeting. If the Building Commissioner grants a request with a modification over the applicant's objection, the Building Commissioner's written decision shall address the applicant's objection. If the Building Commissioner notifies the applicant of a potential modification, the thirty (30) day period to issue a decision is stayed until the applicant has responded pursuant to this section.

- f. The thirty (30) day period to issue a decision may be stayed at any time by written request of the applicant.
- g. The Building Commissioner's decision shall be made within thirty (30) days after receipt of the written request (unless extended as described above). If no decision is issued by the Building Commissioner within the above-stated time period, the request shall be deemed granted.

#### 6. *Confidentiality*

The Building Commissioner and each department and individual identified in Section 5, as well as every other individual or department in the Town, shall maintain information submitted in support of a request for a reasonable accommodation as confidential to the greatest extent permitted under Federal law and the Public Records Law and such information shall not be made available for public inspection.

#### 7. *Required Findings*

The written decision to grant, grant with modification, or deny the request for reasonable accommodation shall be consistent with Fair Housing Laws and shall be based on the following criteria:

- a. Whether the housing, which is the subject of the request for reasonable accommodation, will be used by a person with a disability protected under fair housing laws;

Whether the requested accommodation is necessary to make the use of a dwelling available to an individual with disabilities protected under fair housing laws;

- a. Whether the requested accommodation would impose an undue financial or administrative burden on the Town;
- b. Whether the requested accommodation would require a fundamental alteration in the nature of the Town's land use and zoning or building program; and
- c. Whether the requested accommodation is necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling, or to access, occupy, or utilize property, consistent with federal and state disability laws.

#### 8. *Appeals*

- a. The applicant may appeal a decision to deny a request or grant the request with modifications pursuant to G.L. c. 40A, § 8. The Zoning Board of Appeals will consider such appeal as expeditiously as possible.

- b. If an applicant needs assistance in filing an appeal on an adverse decision, the Zoning Board of Appeals will provide assistance to ensure that the appeals process is accessible.
  - c. A decision to grant a request shall not be appealable prior to the issuance of a building permit.
9. If the applicant does not apply for a building permit within one (1) year from the date of the original reasonable accommodation application to the Building Commissioner, and thereafter applies for a building permit, the Building Commissioner may review the status of the accommodation in light of any changed circumstances. If there is a material change in the underlying facts supporting the original accommodation, the Building Commissioner may require the applicant to refile under the procedures set forth above. If for any reason the thirty (30) day period to issue a decision is stayed, this one (1) year period is stayed to the same extent.

10. *Emergency Requests*

If an applicant requires a reasonable accommodation on an emergency basis, they may request expedited processing. The Building Commissioner shall evaluate the urgency of the request and, if the Building Commissioner agrees an emergency exists, he or she shall render a determination on the reasonable accommodation request within seven (7) days. If the Building Commissioner intends to decide a reasonable accommodation request on an emergency basis, they shall inform any department that received the application pursuant to Section 5(d) above of that decision and the date on which they intend to decide the request.

**Approved:**    AYE: 177

NO: 42

ABSTAINED: 15

(Seal)

A TRUE COPY  
ATTEST:

Ben Kaufman  
Town Clerk