

****REVISED****

**TOWN OF NANTUCKET
2021 Annual Town Meeting
Citizen Warrant Article Submissions**

Articles A - H are new petitions for 2021; Articles A 35 – A 114 were submitted for 2020 but not acted upon

Article No.	Lead Petitioner	Article Description	Comment
A	David Schultz	Zoning Map Change: R-5 to CN – 10 and 12 Youngs Way	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
B	John F. McGrady, Jr.	Transfer custody of parcel from Select Board to School Committee – 10 Surfside Rd.	Approved as to form. By statute, this requires a 2/3 vote of Town Meeting and the Select Board must vote that it no longer requires the parcel for presently held purposes.
C	Emily Molden	Amend Zoning Bylaw, §139-2 – add further limitations on docks, piers and wharves in island perimeter areas.	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
D	Ken Beaugrand	Community Preservation Committee FY2021 Budget Transfers	Approved as to form. This is one of two standard Community Preservation Committee articles each year.
E	Ken Beaugrand	Appropriation: Community Preservation Committee FY 2021 Budget	Approved as to form. This is one of two standard Community Preservation Committee articles each year.
F	Brian Ryder	Zoning Map Change – LUG-1 to R-40: 18 Evergreen Way.	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
G	Brian Ryder	Town Sewer District Map Change: 18 Evergreen Way.	Approved as to form. If the Select Board does not recommend the article, a positive motion will

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Article No.	Lead Petitioner	Article Description	Comment
			require a two-thirds vote at Town Meeting for passage.
H	Diane M. Ryder	Zoning Map Change – LUG-1 to VR: 8 and 10 Chatham Road.	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
I	Beth Maier	Real Estate Acquisition – Hancock Street	Approved as to form. This Article is the acquisition portion under the Yard Sale program.
J	Beth Maier	Real Estate Conveyance – Hancock Street	Approved as to form. This Article is the conveyance portion under the Yard Sale program.
K	Robert Von Kampen	Zoning Map Change – V-R to R-20 and Town Overlay District	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
L	Brenda Garnett	Real Estate Acquisition – “Way” off of Quail Lane	Approved as to form. This Article is the acquisition portion under the Yard Sale program.
M	Brenda Garnett	Real Estate Conveyance – “Way” off of Quail Lane	Approved as to form. This Article is the conveyance portion under the Yard Sale program.
N	Richard Beaudette	Siasconset Sewer District Map Change: Isobels Way	Approved as to form. If the Select Board does not recommend the article, a positive motion will require a two-thirds vote at Town Meeting for passage.

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Article No.	Lead Petitioner	Article Description	Comment
O	Thomas Hanlon	Zoning Map Change – R-20 to C-TEC and/or CN: Old South Road	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting. In addition, please note that the motion on this article must be to change the zoning district to either CTEC <u>or</u> CN, not both.
P	Thomas Barada	Charter Amendment: Sec. 2.5(c), Town Meeting Warrant	Approved as to form. This proposes an amendment to Section 2.5(c) of the Town Charter, and there are two alternatives to achieve this. First, G.L. c.43B provides that a charter may be amended by a 2/3 vote of Town Meeting and approval of the voters on a subsequent Annual Town Election ballot (this would have to occur on the 2022 election ballot). Alternatively, Town Meeting may authorize the Select Board to request a special act from the General Court. The motion on this article should specify which method is being used.
Q	Meghan Glowacki	New General Bylaw: Safety of Drinking Water	Approved as to form. If approved by Town Meeting, the Attorney General’s Municipal Law Unit will review the bylaw for consistency with state and federal law and regulations. The maximum contaminant level in the bylaw is lower than that currently adopted by the

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Article No.	Lead Petitioner	Article Description	Comment
			Massachusetts Department of Environmental Protection, but that would not necessarily lead to disapproval of the bylaw.
R	John Brescher	Zoning Map Change – SR-10 to SR-1 or SOH	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting. In addition, please note that the motion on this article must be to change the zoning district to either SR-1 <u>or</u> SOH, not both.
S	David Callahan	Real Estate Acquisition – 4 Morgan Square	Approved as to form. This Article is the acquisition portion under the Yard Sale program. It would be useful to voters to include a plan or Assessors Map showing the location of the subject parcel.
T	David Callahan	Real Estate Conveyance – 4 Morgan Square	Approved as to form. This Article is the conveyance portion under the Yard Sale program. It would be useful to voters to include a plan or Assessors Map showing the location of the subject parcel.
U	Tobias Glidden <div data-bbox="344 1386 726 1458" style="border: 1px solid black; padding: 2px; display: inline-block; color: red; font-weight: bold;">ARTICLE WITHDRAWN</div>	New General Bylaw: Licensing of Short-Term Rentals	The proposed bylaw is in generally satisfactory form, but certain amendments may be advisable. A separate opinion letter from Town Counsel will be provided.

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Article No.	Lead Petitioner	Article Description	Comment
V	Lori A. Geddes	Town Sewer District Map Change: 1 Morgan Square	Approved as to form. If the Select Board does not recommend the article, a positive motion will require a two-thirds vote at Town Meeting for passage.
W	Kevin B. Kuester	Amend General Bylaws §127-19 and §127-20: Road Construction	Approved as to form.
X	Jacques Zimicki	Amend General Bylaws, §101-2: Noise	Approved as to form.
Y	Emily Osley	Adopt Indigenous Peoples' Day locally in place of Columbus Day Holiday	This article proposes a non-binding directive to change the name of the holiday falling on the second Monday in October.
Z	Brooke Mohr	Home Rule Petition: Dedicate 25% of Land Bank fees to Affordable Housing Trust for 20 years	Approved as to form. This article proposes a home rule petition for a special act to dedicate 25% of total Land Bank fees to the Nantucket Affordable Housing Trust for a period of 20 years.
AA	Diane Ryder	Zoning Map Change: LUG-1 to R-20 – 8 and 10 Chatham Road	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
BB	Arthur I. Reade, Jr.	Seeks a vote for 2/3 of all local option room excise taxes to be allocated to the Affordable & Year-Round Housing Stabilization Fund	Approved as to form; however, , because the Town relies on a significant portion of the rooms tax revenue to balance the Town's operating budget, approval of this article would likely cause

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Article No.	Lead Petitioner	Article Description	Comment
			the Town to end Town Meeting with a deficit that would not allow for the setting of the Town's tax rate for FY 2022, unless other cuts were made in the operating budget prior thereto.
CC	John W. Bartlett	Zoning Map Change: RC-2 to CN, LUG-2 to CN, RC-2 to LUG-2 – various portions of 19, 23, 30, 33 and 39 Bartlett Farm Road	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
DD	Ken Beaugrand	Amend Section 11-21 of General Bylaws, Community Preservation Committee	Approved as to form. This would remove unnecessary language.
EE	Tobias Glidden	New General Bylaw: Licensing of Short-Term Rentals	Approved as to form. This is a revised version of the bylaw proposed in Article U on this chart. The revised version addresses many of the recommended changes we detailed in a separate opinion dated December 9, 2020.
FF	Steven Roethke	Real Estate Acquisition – Parcel between Hawthorne Lane and Vestal Street	Approved as to form. This Article is the acquisition portion under the Yard Sale program.
GG	Steven Roethke	Real Estate Conveyance – Parcel between Hawthorne Lane and Vestal Street	Approved as to form. This Article is the conveyance portion under the Yard Sale program.

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Article No.	Lead Petitioner	Article Description	Comment
HH	Linda Williams	Town Sewer District Change: Parcels on Kimball Avenue and Heather Lane	Approved as to form. If the Select Board does not recommend the article, a positive motion will require a two-thirds vote at Town Meeting for passage.
II	Linda Williams	Zoning Map Change: R-20 to R-5 – 2 Mayflower Circle and 32 Evergreen Way	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.

December 10, 2020

Brian W. Riley
briley@k-plaw.comMs. C. Elizabeth Gibson
Town Manager
Nantucket Town Hall
16 Broad Street
Nantucket, MA 02554Re: Citizen Petition Warrant Article – Safety of Drinking Water

Dear Ms. Gibson:

You have requested an opinion regarding the enclosed citizen petition warrant article, for which Ms. Meghan Glowacki is the primary sponsor. In our general comments, I noted that while the proposed general bylaw appears to be in proper legal form, there is a possibility that the Attorney General could find that the bylaw is inconsistent with state law or regulations. I will detail the reasons for my caution, but also reiterate that I cannot be certain whether the Attorney General will have such concerns and Town Meeting may vote on the proposed bylaw.

This proposed bylaw concerns potential detectable levels of Per- and Polyfluoroalkyl Substances (known as “PFAS”) in the Town’s public water supply. These contaminants have been the subject of increased concern and regulation at both state and national levels. The proposed General Bylaw (“Bylaw”) would require various Town departments and facilities to conduct quarterly testing of the water supply. In the event that a test detects PFAS at a level of 15 parts per trillion or higher, a public alert is required and a “corrective action plan” must be presented to the Select Board within 90 days. The Massachusetts Department of Environmental Protection (DEP) recently issued its own regulations regarding PFAS in public water supplies, located at 310 CMR 22.07G. These regulations, which will be phased in during 2021 based on the population served by the public water supply, also require quarterly testing by public water systems and corrective action if necessary, but DEP establishes a maximum contaminant level of 20 parts per trillion. The proposed bylaw would therefore be stricter than DEP’s regulations.

When the Attorney General’s Municipal Law Unit reviews a bylaw approved by vote of Town Meeting, it considers whether the bylaw would either conflict or be inconsistent with the Massachusetts Constitution or the General Laws. One aspect of such analysis is whether state law has “preempted” municipalities from adopting ordinances or bylaws on a particular subject – i.e., whether allowing local regulation on a subject would “frustrate the purpose” of state laws or regulations on the same subject. In assessing the inconsistency of local enactments with the General Laws, “[t]he legislative intent to preclude local action must be clear.” St. George Greek Orthodox Cathedral of Western Mass., Inc. v. Fire Department of Springfield, 462 Mass. 120, 125-126 (2012) (quoting Bloom v. Worcester, 363 Mass. 136, 154 (1973)). This intent can be either express or inferred. Local legislative action “is precluded either where the Legislature has made an explicit

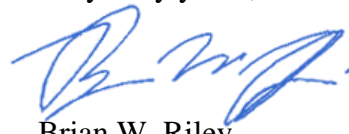
Ms. C. Elizabeth Gibson
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indication of its intention in this respect, or the purpose of State legislation would be frustrated [by a local enactment] so as to warrant an inference that the Legislature intended to preempt the field.” Id. at 126.

The Municipal Law Unit will no doubt seek comment from DEP in reviewing this bylaw if Town Meeting approves it, to see if DEP would consider such a bylaw to infringe on its statewide regulation of PFAS. In the 1985 decision of Town of Wendell v. Attorney General, 394 Mass. 518, the Supreme Judicial Court considered a proposed bylaw (disapproved by the Attorney General) that would have adopted local requirements and prohibitions for the use of certain pesticides, an area already governed by G.L. c.132B, the Massachusetts Pesticide Control Act. The SJC ultimately upheld the Attorney General’s disapproval, stating “we consider the by-law’s attempt to provide greater regulation of the use of pesticides than is called for by the act and conclude that in this regard the by-law impermissibly frustrates the identifiable statutory purpose of centralized regulation of pesticide use.” Id. at 523. The SJC’s analysis in Town of Wendell would likely be looked to by the Municipal Law Unit if called on to review the proposed bylaw regarding PFAS.

As stated above, I cannot predict whether the Attorney General would ultimately determine that the bylaw at issue is preempted by DEP’s new regulations regarding PFAS, but I wanted to bring attention to the issue. It would not be improper for Town Meeting to vote on this bylaw, but there is the potential that the Attorney General would disapprove it as inconsistent with state law.

Very truly yours,



Brian W. Riley

BWR/cqm

Enc.

cc: Select Board
Finance Committee

742158/NANT/9999

December 10, 2020

Brian W. Riley
briley@k-plaw.com

Ms. C. Elizabeth Gibson
Town Manager
Nantucket Town Hall
16 Broad Street
Nantucket, MA 02554

Re: Citizen Warrant Article Petition – Short-Term Rentals

Dear Ms. Gibson:

You have asked me to review the Citizen Warrant Article Petition proposed by ACKNow, Inc., and entitled: “General Bylaw on Licensing Short-Term Rentals” (the “Bylaw”). A copy of the Bylaw is attached hereto for your convenience.

General Overview

The Bylaw seeks to amend the Town Code by adding a new Chapter 142 entitled “Short-Term Rentals.” The stated purpose of the Bylaw is, among other reasons, to “ensure proper regulation of exclusively commercial uses of Homes in Nantucket’s residential areas.”

Specifically, the Bylaw establishes a licensing scheme for those individuals seeking to rent residential dwelling units on a short-term basis. The Bylaw gives certain indulgences to Nantucket residents seeking to rent their dwellings, and limits the ability of non-residents to do the same. Principally, the Bylaw makes a distinction between **Short-Term Rental** and **Resident Short-Term Rental**.

Requirements Limitations on Frequency and Use

“**Short-Term Rental**” is defined as: “Any rental of a residential dwelling unit, or of a bedroom with a dwelling unit, in exchange for payment, as residential accommodations for a duration of less than thirty (30) consecutive days, but not a Transient Residential Facility.” See Section 142-2.

Short-Term Rentals are limited, in the aggregate, to forty-five (45) consecutive or nonconsecutive days per calendar year. See Section 142-3(a)(4). Additionally, “Short-Term Rental Operators” may only offer rentals to one party at a time, and may not rent separate bedrooms or spaces to separate parties. See Section 142-3(a)(5).

Ms. C. Elizabeth Gibson
 December 10, 2020
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Occupancy of Short-Term Rentals are further limited to 2 persons per bedroom, and only 1 parking space. See Sections 142-3(a)(6) and 142-3(a)(7).

“Resident Short Term Rental” is defined as: “The short-term rental of a dwelling unit, or of individual bedrooms within a dwelling unit, that is a residence or, or accessory to the residence of, a Nantucket resident, which residency shall be determined by the Town using one or more of the following methods – voter registration, driver’s license, school enrollment, or state and federal filing address.

Resident Short Term Rentals may not exceed ninety (90) consecutive or nonconsecutive days per calendar year. See Section 142-3(a)(3).

Below is a reference chart for the differences between Short-Term Rentals and Resident Short-Term Rentals

	Short-Term Rental	Resident Short-Term Rental
Maximum # of Days Per Year (Consecutive or Nonconsecutive)	45 days	90 days
Minimum Rental Period	7 consecutive days	N/A
Maximum # of Days Per Rental Periods	30 days	N/A
Maximum # of Renters Per Bedroom	2	N/A
Maximum # of Parking Spaces	1	N/A

Registration, Permitting, Inspection and Fees:

Pursuant to Section 142-5(a), all Short-Term Rental Operators must apply for a Permit from the Town’s Planning Office. If a Permit is granted, the Operator shall register with the Town and secure a Certificate of Registration according to the Standards set forth by the Building Commissioner. See Section 142-5-(d).

Operators must also maintain an up-to-date log of all occupants, and must permit the Board of Health to inspect the occupant log and the residential premises upon reasonable notice. See Sections 142-5(e)-(f).

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December 10, 2020

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Permits are valid for one (1) year, and may be renewed at the Board of Health's discretion. See Section 142-5(g). Lastly, enforcement of the bylaw is pursuant to non-criminal disposition.

General Concerns:

Upon an initial review of proposed bylaw, I have identified the following provisions that warrant further discuss or revision:

- 1.) Pursuant to Section 142-5(a), Operators must apply for a Permit with the Town's Planning Office. However, the Bylaw does not specify a specific Permit Granting Authority. This would be important for enforcement of unpaid taxes or charges pursuant to Section 142-5(c), discussed below.
- 2.) Section 142-5(b) relative to permit fees utilizes inconsistent terms: Operator-Occupied Short Term Rentals v. Resident Short Term Rentals.
- 3.) Pursuant to Section 142-5(c), Permit applicants must be current with all town taxes, water, and sewage charges, and shall not have any outstanding building, sanitary, zoning, or fire code violations, orders of abatements, or stop work orders. For unpaid taxes or other municipal charges, the provisions of Chapter 19, Sections 19-13 through 19-18 would apply
- 4.) Section 142-5(d) provides that the Building Commissioner shall not grant any Certificate of Registration unless the Operator has provided the Town with a Certificate of Insurance evidencing "appropriate liability insurance coverage" for the Short-Term Rental. The Bylaw does not provide what an "appropriate" level of coverage is.
- 5.) Section 142-5(d) states that the Building Commissioner may set forth standards for the issuance of a Certificate of Registration. However, Section 142-4 also states that the Board of Health may promulgate regulations. There is a risk of inconsistent standards/requirements.
- 6.) Pursuant to Section 142-5(f): "Permit-holders are subject to inspection of the Short-Term Rental by the Town upon reasonable notice, or without such notice in the event of imminent concern or threat to public health or safety." Notwithstanding this provision, any search by the Town would require consent or an administrative warrant.
- 7.) Permits are granted by the Town's Planning Office, but may be renewed at the Board of Health's discretion pursuant to Section 142-5(g). In my opinion, the bylaw is inconsistent as to who is the permit granting authority.

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- 8.) Enforcement of the Bylaw, Section 142-6, is at least optionally via noncriminal disposition. However, the Bylaw does not specify any fine amount. The Town's noncriminal disposition bylaw, under Sections 1-2 through 1-6 of the Code, is available to enforce bylaws and regulations "the violation of which is subject to a specific penalty." In order for noncriminal disposition citations to be available, therefore, the Bylaw would need either a specific fine ["\$100 per violation"] or a fine schedule ["\$50 for a first offense, \$100 for a second or subsequent offense,..."].

Please let me know if I can be of further assistance. Thank you for your attention to this matter.

Very truly yours,



Brian W. Riley

BWR/JGM/cqm

cc: Select Board

Finance Committee

742317/NANT/0275

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A 35	Clifford Williams	Appropriation: Incineration of Solid Waste	Approved as to form. The Article seeks to appropriate funds. Any motion will have to identify a specific funding source and amount. A positive vote is only an authorization to spend and does not mandate that the Select Board actually expend the funds. Town Meeting cannot require that the Town contract with a specific vendor.
A 36	Clifford Williams	Appropriation: Legal Opinion for Beach Access	Approved as to form. The Article seeks to appropriate funds. Any motion will have to identify a specific funding source and amount. A positive vote is only an authorization to spend and does not mandate that the Select Board actually expend the funds.
A 37	Andrew G. Lowell	Appropriation: Construction of a hazardous waste collection building.	Approved as to form. The Article seeks to appropriate funds. Any motion will have to specify a funding source. A positive vote is only an authorization to spend and does not mandate that the Select Board actually expend the funds.
A 38	Maria Zodda	Re-establish Parks & Rec Dept.	The first part of the Article is a non-binding directive to Town Administration to re-establish the Parks and Recreation Department. The last part of the Article seeks to appropriate money to fund the position of Director.
A 54	Susan Ottison	Zoning Map Change: R-10 to CN - 3 Cobble Ct	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.

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A 55	Robert von Kampen	Zoning Map Change: VR to VN - Polpis Rd & Chatham Rd	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
A 56	Irean Schreiber	Zoning Map Change: LUG-2 to R-20 - 25 Rugged Rd	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
A 57	James Driscoll	Zoning Map Change: LUG-3 to LUG-1 - Driscoll Way	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
A 58	Vallorie Oliver	Zoning Bylaw Amendment: Commercial Mid-Island – Height Restriction	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
A 61	Rick Atherton	Zoning Bylaw Amendment/Home Rule Petition: Coastal Erosion Liability Waiver	Approved as to form. This zoning article should be referred to the Planning Board for a report and recommendation prior to Town Meeting.
A 63	Andrew G. Lowell	Require the Town to enact legislation or regulations to require that one out of 10 residential building permits be designated affordable.	This Article proposes a non-binding directive to the Town to either (1) develop a zoning bylaw proposal or (2) a home rule petition to achieve the intent of the article.
A 64	Andrew G. Lowell	Require PLUS to create and enforce regulations to hold land owners accountable for repairing damage to public property caused by permitting activities.	Although the word “require” is used, this Article is a non-binding directive to Town Administration to enact regulations.
A 67	John F. McGrady, Jr.	Prohibiting Roundabouts Near School	The Article is a non-binding directive. Town Meeting does not have the authority to subject a traffic regulation to Town Meeting approval. Town Meeting’s authority is limited to appropriation of funds for the Project.

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A 68	Theresa Williams	Directs Town officials to establish standards for performance of duties by Town officials and a complaint procedure to address appropriate redress of wrong doing or maladministration. Establish a Complaints Committee to Deal with Complaints of Wrong Doing and Maladministration Against Town Officials.	This article is legally defective and has been proposed in the past. The first section of this petition (published standards) constitutes a non-binding directive to Town Officials. The second section of this petition requires the establishment of a Complaints Committee that would be empowered “to deal with complaints of wrongdoing and maladministration.” Such a Committee cannot be established merely by a vote of Town Meeting, whose authority is limited to establishing committees to study a particular question. In order for a “Complaints Committee” to effectively “deal with” complaints, such a Committee would have to be established by Charter or Bylaw. The election of a Committee at the Annual Election would require a special act or a charter amendment.
A 73	Bruce Mandel	Bylaw Amendment: Plastics Ban	This proposed bylaw expands the single use plastics general bylaw enacted at the 2019 Annual Town Meeting, now codified as Chapter 124A of the Town Code. It also incorporates Section 125-3 of the Town Code (Biodegradable Packaging) into the new bylaw. Finally, it directs the Board of Public Works to rescind Section 71.00 of its regulations that regulates biodegradable packaging in order to be consistent with the new bylaw. The single use plastics bylaw was approved by the Attorney General despite opposition from the beverage bottling industry. The new bylaw

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			significantly expands the list of plastic products that will be banned.
A 75	Ian Golding	Bylaw Amendment: Bicycles - New Article IV: Bicycle Accident Database	<p>This proposed amendment to the General Bylaws would require the establishment of a bicycle accident database. Although the article references use of \$50,000 from the motor vehicle excise tax, the article does not actually appropriate any money for this purpose. If the bylaw is approved, an appropriation at a future Town Meeting would be necessary.</p> <p>This article and the next two were proposed in in a different form last year, in a single article. Town Meeting referred the article to the Bicycle and Pedestrian Advisory Committee for further study.</p>
A 76	Ian Golding	Bylaw Amendment: Bicycles - New Article IV: Bicycle Right of Way	See above.
A 78	Linda Williams	Bylaw Amendment: Outdoor Lighting	The article proposes certain amendments to the Town’s outdoor Lighting Bylaw. The language of the petition, however, is vague and, as a result, unenforceable. Any motion made under this article would have to contain specific language changes to the bylaw and, as such, would be subject to further review prior to enactment.
A 79	Julia Lindner	Noise Bylaw Amendment: Gas-powered Leaf Blowers	Approved as to form. The article proposes a general bylaw that would prohibit the commercial use of gas-powered leaf blowers
A 83	Bryan Swain	Sewer District Map Change: 18 Kimball Ave	Approved as to form. If the Select Board does not recommend the article, a positive motion will

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			require a two-thirds vote at Town Meeting for passage.
A 84	Bryan Swain	Sewer District Map Change: 154R Cliff Rd	Approved as to form. If the Select Board does not recommend the article, a positive motion will require a two-thirds vote at Town Meeting for passage.
A 114	Ian Golding	Bylaw Amendment: Bicycles - New Article IV: Bicycle Passing Buffer Zone	See above, A 75 & A 76.

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