

Article 13 General Bylaws Amendment: Light Trespass

RECOMMENDED that the Town vote to Refer the Article Back to the Select Board for Further Study.

COMMENT: This proposed Article would add a new Chapter to the General Bylaws of the Town of Milton, entitled “Protection Against Lighting Trespass” and if approved, will prohibit lighting “trespass” throughout the Town. The Article grants the Select Board with the sole authority to determine what constitutes a lighting trespass. The Article defines the term “lighting trespass” as “a condition in which artificial light emitted from a Luminaire on one property is directed in such a manner that the light source or glare is visible from any other property and constitutes a public hazard.” It does not, however, provide guidelines as to what may constitute a lighting trespass for property owners, commercial establishments and other properties.

The Article provides that a violation of the Light Trespass Bylaw constitutes a criminal misdemeanor and provides the Town with the authority to pursue monetary fines as well as civil remedies, including injunctive relief and monetary damages. A misdemeanor may, pursuant to Massachusetts law, be punishable by imprisonment and entitles the accused to a trial by jury. The town upon whose bylaw this Article is based, New Marlborough, MA, does not provide any criminal penalties for violation of its lighting trespass bylaw.

This Article, as proposed, is not being proposed as a zoning bylaw, but rather, a general bylaw. In Massachusetts, lighting bylaws are often zoning bylaws, however, at least one other Town (New Marlborough) has passed its lighting bylaw as a general bylaw, rather than as a zoning bylaw. Zoning bylaw provisions are typically required to be approved by a 2/3 vote at Town Meeting, whereas general bylaws are subject to a simple majority vote. Zoning bylaws require public hearing and must undergo Planning Board analysis and reports, whereas general bylaws do not have such requirements. Thus, all zoning bylaws are subjected to expert analysis, public comment and thus, higher scrutiny. There are no legal prohibitions against passing a bylaw of this type as a general bylaw.

The Warrant Committee discussed the propriety of the Select Board bringing the Article as a proposed amendment to the General Bylaws, versus the Planning Board bringing the Article as a proposed amendment to the Zoning Bylaws. The Warrant Committee expressed its preference that an expert opine as to what constitutes a lighting trespass, and stated that the Planning Board, rather than the Select Board, may be the more appropriate Board to propose a lighting bylaw given their deliberative public process.

In discussing how this may affect citizens of the Town, the Warrant Committee considered the general lighting that is on many homes throughout Milton. Many members expressed concern that holiday or celebratory lights could be considered lighting trespass under the Article, as written. Town Officials did advise that the Select Board’s intention was not to prohibit seasonal lighting. Moreover, motion-activated floodlights, and other security, porch style lights installed for safety and visibility, could be considered lighting trespasses, and could detrimentally limit a property owner’s right to protect their property and/or provide for safety. The language of the proposed Article provides no carve-outs in the Bylaw for motion detected floodlights, security, or holiday type lights. The Article, as written, can be enforced in a very open-ended manner, at any

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time, given the lack of exceptions for the situations mentioned above. There were further concerns expressed about the applicability of the Article, if passed, on commercial businesses, as well as houses of worship, and schools, many of which are near residential districts.

There was some discussion by the Warrant Committee that this proposed bylaw may have been targeted at a certain property or properties, rather than based on general concerns about lighting trespasses in Town. It was reported to the Warrant Committee by Town Officials that there have not been any increased reports of complaints regarding offensive lighting in the Town. There was also significant concern about the potential for misuse of this bylaw by neighbors to target certain properties and/or commercial businesses. It is important to note that Milton has a Code Enforcement Officer, however additional staff may be required. Residents may also bring civil claims for lighting trespass in court. Town Counsel confirmed that residents have existing avenues of relief available to them in the event of a lighting trespass.

The Warrant Committee further submits that the Article is written in a vague manner and does not specifically define what constitutes a lighting trespass. The failure of the Article as to what separate violations entail, and whether a sole light can constitute multiple violations (e.g., a separate violation per each day the light is turned on) is problematic. The Warrant Committee noted that there was a lack of any guidelines or general framework provided in the Article and further questioned whether training on lighting trespass would be provided to the Select Board prior to their enforcement of the Article. The Warrant Committee believes that a trained Town Employee, rather than the Select Board, should be charged with investigation and enforcement of any bylaw of this type, but could likely require additional staff.

Written comments were provided by a Select Board member to the Warrant Committee, which were discussed in an open meeting however, the Select Board has not made a recommendation on this bylaw amendment.

For the above reasons, the Warrant Committee recommends that this Article be sent back to the Select Board for further study.