

PROPOSED LOCAL LAW NO. 9-2009

A Local Law to amend Chapter 296 (Streets and Sidewalks) of the Village of Mamaroneck by amending §§296-14 (Repair rates and deposits) and 296-15 (Repair by property owner, notice, cost-sharing program) and adding an Article III entitled “Street Obstructions”.

Be enacted by the Board of Trustees of the Village of Mamaroneck as follows:

SECTION 1. Section 296-14 (Repair rates and deposits) of Chapter 296 (Streets and Sidewalks) is hereby amended to read as follows: **[CHANGES ARE IN BOLD OR INDICATED BY STRIKEOUT]**

Rates for repair of pavements, as established by the Board of Trustees, ~~are as follows~~ **set forth in Chapter A347, as may be amended from time to time by resolution of the Board of Trustees.**

- A. ~~Minimum deposit for work done by hand: \$100 per square foot.~~
- B. ~~Minimum deposit for work done by machine: \$200 per square foot.~~
- C. ~~Minimum deposit for sidewalk openings: \$30 per square foot.~~
- D. ~~Minimum deposit for general sidewalk repairs: \$100.~~
- E. ~~Minimum deposit for curb cuts: \$100.~~
- F. ~~Ordinary road, oiled or sealed: \$2.50 per square foot.~~
- G. ~~Blacktop on penetrated stone base: \$2.50 per square foot.~~
- H. ~~Reinforced concrete pavement: \$5 per square foot.~~
- I. ~~Blacktop on concrete base, including Hastings block or brick: \$5 per square foot.~~
- J. ~~Sidewalk openings: \$4 per square foot.~~
- K. ~~Concrete curb, disturbed or cut: \$10 per linear foot.~~
- L. ~~Concrete curb and gutter, section disturbed: \$20 per linear foot.~~
- M. ~~Unpaved areas, grass or earth shoulder: \$1 per square foot.~~

SECTION 2. Section 296-15 (Repair by property owner, notice, cost-sharing program) of Chapter 296 (Streets and Sidewalks) is hereby amended to read as follows: **[CHANGES ARE IN BOLD OR INDICATED BY STRIKEOUT]**

- A. It shall be the duty of the owner of every lot or piece of land in the Village of Mamaroneck to keep the sidewalks **curbs, walls and fences** in front of the premises owned by **him, her,** them or it at all times in good repair and in a safe condition for public use and free from all obstructions or encumbrances so as to permit the public use thereof in an easy, safe and commodious manner.

- B. In case any sidewalk and/or curb, **appurtenant wall or private fence** in said village shall, at any time, in the judgment of the Public Works department head, be unsafe and require repairing, said department head shall serve a notice upon the owner of the lot or piece of land in front of which such sidewalk and/or curb is in an unsafe condition, requiring the owner or owners thereof, within **thirty** (30) days from the service of each notice, to commence actual work to repair such sidewalk and/or curb so as to make the same in good repair and in a safe condition. Such notice shall be served on such owner personally or by leaving the same at the residence of such owner or owners with a person of suitable age and discretion or by posting the same conspicuously on such premises or by mailing the same addressed to such owner or owners at their residence address. Where there are two or more owners of any such property, service upon one of them shall be sufficient. In the event that said owner requires more than the **thirty** (30) days to commence repair, approval for an extension of time must be granted by the Public Works department head.

- C. If any owner or owners shall neglect or refuse to repair such sidewalk and/or curb within the time limited therefor by said notice or extended by the Public Works department head, the Village of Mamaroneck shall forthwith make such repairs in such manner as it shall deem proper and suitable and shall file a certificate of the expense thereof, together with a description of the property in front of which such repairs were made, with the Village Clerk-Treasurer, who shall certify the same to the Board of Trustees at the next regular meeting thereafter. The expense of making such repairs shall be paid by the owner of the property abutting on the sidewalk and/or curb so repaired and may be collected in an action at law or assessed upon the adjoining land. Such assessments shall be made and taxes levied as provided by the Village Law **with administrative costs calculated and added to said bill.** The Village Board may, by resolution and without further public hearing, assume such percentage of the cost of any sidewalk and/or curb repair under such program as the Board, in its sole judgment, should decide, and, further, although the village may determine the amount which the taxpayer will pay and the amount the village will pay, in no event will there be assessed to the taxpayer an amount in excess of what he would pay under a voluntary program on a 50/50 basis as described below.

D. Cost-sharing program.

- (1) Said 50/50 program or any other sharing of the percentage of cost of repair of sidewalks and/ or curbs shall apply only to sidewalks and curbs which adjoin or abut residential properties within the village. **Said program shall be administered and overseen by the Village Manager and the Public Works department head.**
- (2) The voluntary 50/50 cost-sharing program shall be as follows:
 - (a) Where only a sidewalk **or curb** is to be repaired **and/or cured of defective, broken or hazardous portions**, the village will pay 50% and the owner will pay 50% of the cost of such sidewalk repair.
 - (b) Where a sidewalk and curb of the same property are to be repaired, the village will pay 50% and the owner will pay 50% of the cost of such sidewalk and curb repair.
 - (c) Where only a curb is to be repaired, either because no sidewalk exists on the property or if it does exist and it has been determined by the Public Works department head that only the curb is unsafe and repairs to the sidewalk are not needed, then the village will pay 50% and the owner will pay 50% of the cost of such curb repair.
- (3) The voluntary 50/50 cost-sharing program shall be administered under the direction and discretion of the **Village Manager and the** Public Works department head; provided, however, that, if insufficient funds are available in the current yearly budget to effect repairs for all interested applicants, the Board of Trustees shall have the sole power and discretion to determine priorities thereof. Should priorities established by the Board of Trustees prohibit certain applied-for repairs, said application will be carried into the coming fiscal year and given priority over new applications, provided that an emergency condition, as evaluated by **the Village Manager and** the Public Works department head preempts this priority.
- (4) In no event shall the village pay more than the sum of ~~\$1,500~~ **five thousand dollars (\$5,000)** to any applicant with respect to the provisions of the cost-sharing program within a five-year period, unless otherwise approved by the ~~Public Works department head~~ Village Manager.
- (5) Under the conditions stipulated in the voluntary 50/50 program, the applicant must ensure that the required sidewalk permit is obtained before commencement of such work. If this provision is not met and said work is done without a permit, the application for the 50/50 will automatically become void and the applicant

will, therefore, become ineligible to receive any reimbursement from the Village of Mamaroneck for said completed work.

SECTION 3. Article III, entitled “Street Obstructions” is hereby added to Chapter 296 of the Code of the Village of Mamaroneck to read as follows:

§296-19. Legislative intent.

The Board of Trustees has enacted this article to better regulate its right-of-way and to allow property owners the ability to access property while at the same time protecting and safeguarding residents and the general public from the dangers which may result from the unregulated use of the Village’s right-of-way including impeding emergency vehicle access and municipal operations, impairing vehicular and pedestrian safety and exacerbating flooding. The need for access must be balanced with the Village of Mamaroneck’s need to preserve and maintain public access on municipal rights-of-way and protect the public interest by limiting the extent of construction in the public areas through limits on the total areas of construction (for example limiting construction and installation of impervious surfaces) as well as through limits on the number of curb-cuts per property.

§296-20. Prohibited acts; exceptions.

- A. No pole, column, post, fence, hedge, wall, step, sign, lighting or any other structure or object shall be placed in the first five feet of shoulder or sidewalk area of any highway or public right-of-way measured from the curb or edge of a traveled way; except public utility poles and mailboxes on simple unelaborate posts pursuant to a permit issued by the Village Manager; and except isolated trees or ground cover specifically permitted by the Village Manager and installed by the Village, provided that they do not interfere with sight distance, passage or potential passage of pedestrians or motorists or pose a potential public safety hazard or liability for the Village or any impediment to any municipal operations.
- B. Additionally, any existing or conditionally permitted condition which has been licensed by the Village may remain with the understanding that its continued presence does not convey any permanent license, easement or other vested rights to the adjoining property owner, but rather is a revocable temporary license which may be revoked at any time without cause, and furthermore, that the Village does not accept any liability whatsoever, including liability for damage to such objects or condition from any activity of the Village or any third party.

§296-21. Permitted acts.

- A. Only poles, posts, fences, walls, steps, and driveway entrances may be placed in that portion of the shoulder or sidewalk area of a highway or public right-of-way which is more than five feet measured from the private property side edge of the curb or (if

there is no curb) edge of the traveled way and only if specifically permitted in writing by the Village Manager, provided:

- (1) That they do not interfere with sight distance or pose a flood hazard or potential public safety hazard or liability for the Village;
- (2) No more than 60% of the right-of-way in a residential zoning district may be impervious, including but not limited to gravel. Generally, no more than 40% may be dedicated to sidewalk and no more than 20% may be dedicated to driveways in residential zoning districts;
- (3) In commercial zoning districts, including the general downtown commercial district, coverage may be up to 100% provided that it does not create any flood hazard, public safety issue or any impediment to vehicular and pedestrian access;
- (4) The owner of the adjoining property understands and agrees that such installation, by its continued presence, does not convey any permanent license, easement or other vested rights to the adjoining property owner, but rather is a revocable temporary license which may be revoked at any time by the Village without cause, and that the Village does not accept any liability for damage to such items or condition from any activity of the Village or any third party.

B. The following additional standards shall apply to all pedestrian sidewalks, curbs, driveway entrances, appurtenant walls and fences installed within the municipal right-of-way:

- (1) That all shall require a permit (the fees for which are set forth in chapter A347) issued by the Building Department and/or the Department of Public Works and approved by the Village Manager to remove, repair or replace in whole or in part;
- (2) That the Village shall not be responsible for repairs or liability during or after installation or repair;
- (3) Only necessary retaining walls will be permitted and any necessary retaining wall over five feet (5') in height shall require a plan and design by a licensed architect or engineer;
- (4) On a corner lot, no fence, wall, or hedge or planting more than 30 inches in height shall be erected, placed or maintained within the triangular area formed by the intersecting street lines and a straight line joining said street lines at points which are twenty-five feet distant from the point of intersection, measured along said street lines, as measured above the curb level so as to avoid any obstruction to traffic visibility;

- (5) That the construction of any wing wall, staircase or walkway that is necessary to establish and maintain vehicular and pedestrian access may be allowed within the five foot setback, provided that it does not pose a flood hazard, create any public safety issue or any impediment to vehicular and pedestrian access in the right of way;
- (6) That the construction of any wall, curb or sidewalk shall meet or exceed the minimum standards required by the Village, which shall be established administratively by the Building Department and/or the Department of Public Works and promulgated by the Village Manager;
- (7) That no fence installed by an adjacent property owner along a street, within the Village right-of-way, may be over four feet (4') in height or may be closer than five feet (5 feet) to the curb, so as to prevent the installation of any obstruction to visibility to vehicular traffic or impediment to municipal operations such as snow plowing, sanitation pickups, leaf removal operations, installation, repair or maintenance of water/sewer lines, and storm water retention or detention;
- (8) That if any work on utilities within the right-of-way (including gas, water, electric) requires work on or removal of said sidewalks, curbs, walls or fences, then the following shall apply:
 - (a) Sidewalks and curbs shall be restored by the utility(ies)
 - (b) Fences and walls shall be restored by the adjacent property owner(s).
- (9) No driveway exceeding fifteen feet in width shall be installed in the right-of-way;
- (10) That the Village Manager shall retain the right to deny any permit if it does not comply with § 200-4(H) or creates an obstruction to visibility or pedestrian or vehicular traffic or parking or any interference to municipal operations or to the public infrastructure, including, but not limited to, snow plowing, sanitation, leaf removal, water/sewer lines or storm water retention.

§296-22. Liability insurance/Hold harmless agreement.

- A. Prior to the issuance of a permit, the applicant shall file with the Village Manager satisfactory evidence that the applicant has procured and paid for a policy of public liability insurance for the purpose of indemnifying and protecting the Village and the applicant against any loss, damage or injury of any nature which might be incurred by reason of any claim of any nature made against the Village, its officers, employees or agents and/or the applicant. Said policy of Village insurance shall be in an amount not less than \$1,000,000 for any one occurrence with respect to personal injury and in an amount not less than \$500,000 for any one occurrence with respect to property damage, the same to remain in force throughout the duration of the permit. If such insurance policy is canceled, the property owner shall notify the Village, not less than

20 days before cancellation becomes effective, by registered mail addressed to "Village Manager, Village of Mamaroneck, 123 Mamaroneck Avenue, P.O. Box 369, Mamaroneck, New York 10543," and each certificate of insurance shall carry on its face the full text of this cancellation clause.

- B. The applicant must also execute and file with the Clerk-Treasurer a hold harmless agreement in a form acceptable to the Village Attorney.**

§296-23. Removal.

The Village Manager may require the removal of any permanent street obstruction by serving a written notice by certified mail on the owner of property which adjoins the public right-of-way on which the obstruction is located, requiring him to remove the obstruction within five calendar days in the case of a prohibited act, within 10 days in the case of a conditionally permitted act or existing condition and within 24 hours if a serious potential hazard or liability for the Village exists, in the Village Manager's opinion.

§296-24. Failure to remove.

If property owner shall fail to remove the obstruction within the designated time, the Village may perform such removal using Village forces or a contractor employed for that purpose and shall charge the cost of such removal and restoration to the owner of the property. Such charges, along with any administrative costs shall be added to the tax bill.

SECTION 4. If any section, subsection, clause, phrase or other portion of this Local Law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

SECTION 5. This Local Law shall become effective immediately upon filing in the office of the Secretary of State.