

Village of Mamaroneck



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TO: Mayor Murphy and the Board of Trustees
Jerry Barberio, Village Manager
Daniel Sarnoff, Assistant Village Manager
Greg Cutler, Village Planner

FROM: Robert A. Spolzino, Esq.

RE: Version 14 of Proposed Local Law X of 2018

DATE: April 18, 2019

Please excuse my offering version 14 of Proposed Local Law X at this late date, but Village Planner Greg Cutler has an additional suggestion that you may wish to incorporate into the law to prevent unnecessary idling of vehicles in parking spaces dedicated to curb service at food service establishments.

Version 14 is identical to version 13, except that it amends the prohibition on idling in Village Code § 326-19(A) to make it illegal to idle for more than three minutes in a parking space dedicated to curb service (section 13 of the new version of the proposed local law) and would add to the requirements for a special permit for curb service that "the food service establishment defines and implements protocols and posts a sign to advise its patrons that automobile engine idling for more than three minutes is prohibited by § 326-19(A) of this Code" (section 23 of the new version of the law).

Version 14 is attached.

PROPOSED LOCAL LAW X – 2018

A Proposed Local Law to amend Chapter 342 of the Code of the Village of Mamaroneck (Zoning) regarding food service establishments.

BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF MAMARONECK AS FOLLOWS:

*(Language in strike-through ~~abedefghijk~~ to be deleted; language in **bold** is to be added)*

Section 1.

The following definitions contained in Section 150-1(A) of the Code of the Village of Mamaroneck are amended as follows:

CABARET

Any room, place or space in the Village of Mamaroneck in which any live musical entertainment, singing, dancing or other similar amusement is permitted in connection with ~~the restaurant business or the business of directly or indirectly selling to the public food or drink~~ **any business, including a restaurant, as that term is defined in chapter 342, that sells food or drink, directly or indirectly, to the public.**

Section 2.

Section 150-2 of the Code of the Village of Mamaroneck is amended as follows:

No person, firm or corporation shall conduct, maintain or operate or engage in the business of conducting, maintaining or operating in the Village of Mamaroneck a public dance hall or a cabaret or an adult entertainment cabaret **except in a restaurant or membership club, as those terms are defined in chapter 342, and** unless the premises wherein the same is conducted, maintained or operated is licensed in the manner prescribed by this chapter and is otherwise in compliance with applicable local law.

Section 3.

The following definitions contained in Section 281-3 of the Code of the Village of Mamaroneck are amended as follows:

RETAIL SALES

The transfer to a customer of goods in exchange for payment occurring in retail stores, sidewalk sales, farmers' markets, flea markets and ~~restaurants~~ **food service establishments**. The term "retail sales" does not include sales of goods at yard sales, tag sales, and other sales by residents at their home.

Section 4.

Section 285-4(B)(3) of the Code of the Village of Mamaroneck is amended as follows:

- (3) The name, address and telephone number of the restaurant ~~or other food service establishment to be~~ **that is** the subject of the application.

Section 5.

Section 285-5(A) of the Code of the Village of Mamaroneck is amended as follows:

- A. A permit for a sidewalk cafe may ~~only~~ be issued **only** to the owner or the tenant of a building occupied and used ~~for the sale of cooked and prepared food by as a restaurant, a casual food establishment or a fast food restaurant~~ **except fast food restaurants**, in a ~~zoned zoning~~ district ~~permitting in which~~ such a use is **permitted** and abutting the public sidewalk adjacent thereto, provided that the following requirements are met:

- (1) The sidewalk abutting the property, from the property line to the curbline, must not be less than 10 feet.
- (2) There shall be a minimum clear distance, exclusive of the area occupied by the sidewalk cafe, free of all obstructions (such as trees, parking meters, utility poles, streetlights, tree grates, etc.) in order to allow adequate pedestrian movement. The minimum clear distance must be in a straight line so as to create a continuous and unencumbered straight path. The minimum amount of clear distance is noted below:

Width of Sidewalk	Minimum Clear Distance (feet)
10 feet to 14 feet 11 inches	4
15 10 feet to 19 feet 11 inches	5
20 feet and above	10

- (3) A sidewalk cafe may only be located directly in front of the restaurant, **casual food establishment or fast food restaurant** ~~or other food service establishment~~ with which it is associated. These requirements may, however, be waived by written permission from the owner and the tenant of the affected adjacent building and store.
- (4) No permanent structures may be affixed to the sidewalk area used for the cafe or affixed to the building abutting the area for purposes of the cafe, and the area may be occupied only by fencing, railings and planters and by chairs, tables, benches and umbrellas for the convenience of the patrons to be served in such area.
- (5) The applicant shall be responsible for delineating the cafe area by setting up a barrier such as planters, a railing or fencing to physically separate patrons from pedestrian traffic.
- (6) A clear, unoccupied space must be provided, not less than three feet in width, from all entrances of the building abutting the sidewalk to the unoccupied portion of the public sidewalk.
- (7) Prior to the issuance of a permit, the applicant shall file with the Village Manager an agreement to indemnify and save harmless the Village, its officers and

employees against any loss or liability or damage, including expenses and costs for bodily injury and for property damage sustained by any person as a result of the applicant's operation of a sidewalk cafe on public property.

(8) Prior to the issuance of a permit, the applicant shall also file a certificate of general liability insurance naming the applicant and also naming the Village of Mamaroneck, its officers, agents and employees as additional named insureds, with the following limits: for personal injury, \$1,000,000 per individual and \$1,000,000 per occurrence; and for property damage, \$1,000,000 per individual and \$1,000,000 per occurrence, effective for the duration of the permit. The level of insurance may be amended by a resolution enacted by the Board of Trustees.

(9) The site plan submitted by the applicant shall comply with all conditions noted herein.

Section 6.

Section 285-5(C) of the Code of the Village of Mamaroneck is amended as follows:

C. A restaurant ~~or other food service establishment~~, **casual food establishment or fast food restaurant** operating under a special permit issued by the Board of Appeals shall not be required to apply to said board for modification thereof in connection with the use of seasonal sidewalk cafe seats.

Section 7.

Section 285-5(E) of the Code of the Village of Mamaroneck is amended as follows:

~~E. Any provisions of § 342-45 of Chapter 342, Zoning, of the Village Code which may conflict with the provisions of this chapter shall not apply in the operation of a sidewalk cafe.~~

Section 8.

Section 285-7(B) of the Code of the Village of Mamaroneck is amended as follows:

B. Food and beverages ~~shall~~**may** be served by ~~waiters or waitresses~~**servers**, **but employees of the restaurant, casual food establishment or fast food restaurant must clean the tables on a sufficiently regular basis that there is no accumulation of refuse.**

Section 9.

Section 285-7(C) of the Code of the Village of Mamaroneck is amended as follows:

C. All alcoholic beverages to be served at sidewalk cafes shall be prepared within the existing restaurant, **casual food establishment or fast food restaurant**~~or other food service establishment~~, and alcoholic drinks shall only be served to patrons seated at tables. The drinking of alcoholic beverages by a member of the public while a patron at a sidewalk cafe, within the confines of the sidewalk cafe area, shall not be construed

as a violation of any local law controlling consumption of alcoholic beverages in a public area. The operator of a sidewalk cafe shall be in full compliance with the licensing requirements of the State Liquor Authority, as may exist, and shall comply with all other laws and regulations concerning the sale of alcoholic beverages in New York State. In the event that said sidewalk cafe is not in full compliance with the State Liquor Authority's laws, rules and regulations, then the serving and consumption of alcoholic beverages in the sidewalk cafe shall be prohibited.

Section 10.

Section 285-7(D) of the Code of the Village of Mamaroneck is amended as follows:

- D. The restaurant, **casual food establishment or fast food restaurant** ~~or other food service establishment~~ shall not serve food or beverage to a patron at a sidewalk cafe unless that patron is seated at a table.

Section 11.

Section 285-7(E) of the Code of the Village of Mamaroneck is amended as follows:

- ~~E. Food and beverages shall not be served in or on any paper or plastic product of any kind.~~

Section 12.

The following definitions contained in Section 342-3(B) of the Code of the Village of Mamaroneck are amended as follows:

BREW PUB

A food service establishment where food and beverages are prepared to order after being selected by patrons seated at a table or counter, are served by a waiter or waitress and are principally consumed on the premises, but may include incidental sales for consumption off the premises, and which also brews beer for on-site consumption and may lawfully sell beer for off-premises consumption in accordance with the New York State Alcoholic Beverage Control Law and the applicable regulations of the New York State Liquor Authority, not more than 30% of the total gross floor area of the commercial space of which is used for brewing, bottling and kegging.

CAR SERVICE

Service from a ~~restaurant~~ food service establishment provided to customers remaining in their vehicles and parked in a designated parking area of the ~~restaurant~~ food service establishment parking lot.

CURB SERVICE

Service from a food service establishment provided to customers remaining in their vehicles.

DELICATESSEN

~~A business engaged in the retail sale of food, beverages and grocery items for consumption off premises and where meats, fish, salads, cheese, relishes and delicacy items might be specially prepared as sandwiches and other consumable items for lunch, snacks and other off premises consumption. Such use shall not include tables and seating for on premises food consumption. No drive up or car service shall be permitted.~~

DRIVE-IN, DRIVE-THROUGH OR DRIVE-UP SERVICE

Service from a food service establishment provided to customers remaining in their vehicles through a window or other facility.

FOOD ESTABLISHMENT, CASUAL

A food service establishment, such as a bakery, delicatessen or pizzeria, where hot and cold beverages and light meals are prepared and sold and there is no table service, but tables and chairs may be provided for incidental consumption on the premises.

FOOD SERVICE ESTABLISHMENT

~~Any use which includes~~**involves** the serving of food and/or beverages that requires an eating place permit, or is otherwise required by either county or state law to be licensed **to serve food**, including, but not limited to, **brewpubs**, ~~restaurants carry-out restaurants, delicatessens, casual food establishments,~~ and fast-food restaurants and **restaurants**. ~~No drive up or car service shall be permitted.~~

RESTAURANT

~~A business engaged in food service establishment where the preparation and sale of food and beverages are prepared to order after being selected by patrons seated at a table or counter, are served by a waiter or waitress and are principally consumed on the premises, but may include incidental sales for consumption off the premises. The term "restaurant" does not include a business whose principal operation is as a bar or cabaret, brewpub, carry-out restaurant, delicatessen~~**casual food establishment** or fast-food restaurant. ~~No drive up or car service shall be permitted. Car service shall be permitted by special use permit only.~~

RESTAURANT, BREWPUB

~~An establishment primarily engaged in the sale and service of food for on premises consumption which also brews beer for on-site consumption and may lawfully sell beer for off premises consumption in accordance with the New York State Alcoholic~~

~~Beverage Control Law and the applicable regulations of the New York State Liquor Authority, not more than 30% of the total gross floor area of the commercial space of which is used for brewing, bottling and kegging.~~

~~RESTAURANT, CARRY-OUT~~

~~A business enterprise primarily engaged in the retail sale of food or beverages, which may include grocery items, for consumption off the premises, but which also includes the incidental sale of ready to consume food and beverages from a counter-type installation for consumption on the premises, provided that the area devoted to customer seating is clearly accessory to the main business and complies with the area requirements of the New York State Uniform Fire Prevention and Building Code. No drive-up or car service shall be permitted.~~

~~RESTAURANT, FAST-FOOD~~

~~A business enterprise primarily engaged in the sale of food and beverages generally served in disposable or prepackaged containers or wrappers ready for consumption in a facility where most or all of the sales to the public are stand-up services. The term "fast food restaurant" shall not include a carry-out restaurant or delicatessen. No drive-up or car service shall be permitted. Where a fast food restaurant contains multiple counters, each serving one or more brands or types of fast food (for example, one counter for pizza and another for hamburgers), parking requirements shall be increased by 10% for each counter in excess of one.~~

A food service establishment primarily engaged in the sale of ready-to-consume food and beverages where the majority of sales are made at a stand-up counter at which patrons usually select their orders from a standardized menu which offers a limited number of specialized items, generally eaten by hand, where the food is prepared quickly according to standardized procedures and is generally served in disposable or prepackaged containers or wrappers for consumption either on or off the premises and primary cleanup is generally performed by the customer and which incorporates some or all of the following characteristics: a trademark logo or signage, a standardized color scheme for exterior or interior (including but not limited to graphics, awnings, signage visible from exterior), standardized decor and a standardized uniform for employees.

Section 13.

Section 326-19(A) of the Code of the Village of Mamaroneck is amended as follows:

- A. No person shall cause or permit the engine of a motor vehicle, other than a legally authorized emergency motor vehicle or any government vehicle engaged in official government business, to idle for longer than three minutes on Village-owned property or a street, road or highway within the Village **or in any parking spaces dedicated to providing curb service for a food service establishment in accordance with § 342-45(B) of this Code** while parking, as defined in § 129 of the Vehicle and Traffic Law, while standing, as defined in § 145 of the Vehicle and

Traffic Law, or while stopping, as defined in § 147 of the Vehicle and Traffic Law, unless the engine is used to operate a loading, unloading or processing device.

Section 14.

Section 342-30(A)(1)(e) of the Code of the Village of Mamaroneck is amended as follows:

- (e) ~~Restaurants~~ **Food service establishments**, subject to § 342-45, **but not fast-food restaurants**. (This use is subject to the approval procedure set forth in Article X and shall conform to any additional requirements made in connection with such approval.)

Section 15.

Section 342-30(B) of the Code of the Village of Mamaroneck is amended by adding subsection (4), as follows:

- (4) Curb service, subject to § 342-45(B). (This use is subject to the approval procedure set forth in Article X and shall conform to any additional requirements made in connection with such approval.)**

Section 16.

Section 342-30(C) of the Code of the Village of Mamaroneck is amended as follows:

- C. All above C-1 District uses, whether principal or accessory, including storage, **shall be conducted in fully enclosed buildings, except the storage of new and used motor vehicles held for sale** ~~but excluding parking of permitted used cars and~~, outdoor service and curb service at food service establishments ~~restaurant services, as specifically to the extent permitted by § 342-45(A) and sidewalk cafes in accordance with chapter 285, shall be carried on in fully enclosed buildings.~~

Section 17.

Section 342-30.1(D)(1)(c)(4) of the Code of the Village of Mamaroneck is amended as follows:

- (4) If ground-level retail stores, ~~restaurants~~ **food service establishments**, personal service stores, clubs, dancing studios, dancing schools, or other similar uses are provided that, in the opinion of the Planning Board, will encourage an active street environment for pedestrians, the Planning Board may exempt up to 3,000 square feet of gross floor area, of such use, or 1/3 of the ground floor area, whichever is greater, from the calculation of maximum FAR.

Section 18.

Section 342-31(A)(1) of the Code of the Village of Mamaroneck is amended by deleting subsection (1) and adding subsections (k) and (m), as follows:

- (l) Nanobreweries and brewpubs.**

- (m) **Fast-food restaurants, subject to § 342-45, provided that the gross floor area does not exceed 3,000 square feet. (This use is subject to the approval procedure set forth in Article X and shall conform to any additional requirements made in connection with such approval.)**

Section 19.

Section 342-31(A)(2) of the Code of the Village of Mamaroneck is amended as follows:

- C. All above uses, ~~except parking, loading, permitted used cars and permitted outdoor restaurant service,~~ shall be conducted within fully enclosed buildings, ~~as limited by § 342-45~~ **except the storage of new and used motor vehicles held for sale, outdoor service at food service establishments to the extent permitted by § 342-45(A) and sidewalk cafes in accordance with chapter 285.**

Section 20.

Section 342-32(A)(1)(i) of the Code of the Village of Mamaroneck is amended as follows:

- (i) Retail uses, ~~including restaurants and food service establishments other than fast-food restaurants,~~ within 150 feet of the center line of Fenimore Road.

Section 21.

Section 342-32(A)(2) of the Code of the Village of Mamaroneck is amended as follows:

- C. All above uses, including incidental and accessory uses, shall be ~~carried on~~ **conducted** within fully enclosed buildings, except for off-street parking and loading, ~~and a motor vehicle service stations,~~ **outdoor service at food service establishments to the extent permitted by § 342-45(A) and sidewalk cafes in accordance with chapter 285.**

Section 22.

Section 342-32(B)(4) of the Code of the Village of Mamaroneck is amended as follows:

- (4) Retail uses, ~~including restaurants~~ **food service establishments other than fast-food restaurants.**

Section 23.

Section 342-45 of the Code of the Village of Mamaroneck is amended as follows:

§ 342-45. Food service establishments ~~and taverns.~~

- A. No food service establishment ~~or tavern,~~ **including a fast-food restaurant,** shall provide outdoor counter, **walk-up, drive-in, drive-through or drive-up** ~~or curb~~ service, but it may provide service at tables on a porch, or terrace where ~~this is~~ incident and clearly subordinate to the operation conducted within the main building.

- B. The Board of Appeals may grant a special permit to allow a food service establishment to provide curb service if**
- (1) the curb service will be provided only to vehicles in parking spaces dedicated to providing curb service for the food service establishment;**
 - (2) the parking spaces dedicated to curb service are located off-street;**
 - (3) the food service establishment can satisfy any applicable off-street parking requirement without considering the parking spaces dedicated to curb service;**
 - (4) the location and configuration of the dedicated parking spaces will not impair the circulation of vehicles and pedestrians on the site; and**
 - (5) the food service establishment defines and implements protocols and posts a sign to advise its patrons that automobile engine idling for more than three minutes is prohibited by § 326-19(A) of this Code.**
- C. In a C-1 District, no more than 20% of all indoor seats in a food service establishment or ~~tavern~~ shall be counter seats. In a C-2 District, no fast-food restaurant, ~~carry-out restaurant or delicatessen~~ shall be permitted on Mamaroneck Avenue closer than 200 linear feet to another existing fast-food restaurant, ~~carry-out restaurant or delicatessen~~ on the same side of the avenue. Such distance shall be measured from the closest lot line of the respective food service establishments.**

Section 24.

Section 342-50(A)(4)(c) of the Code of the Village of Mamaroneck is amended as follows:

- (c) Compatibility of use. The Planning Board shall allow infill housing above commercial uses or in conjunction with commercial uses only if such uses are found to be compatible with such housing. The Planning Board shall consider noise, smell pollution, hours of operation and expected traffic volumes in making this determination. The following use groups of the C-1 District shall normally be considered incompatible without proof of the contrary from the applicant that is satisfactory to the Planning Board: § 342-30A(1)(e), ~~restaurants~~ **food service establishments**, § 342-30A(1)(g), motor vehicle service stations and public garages, § 342-30A(1)(i), printing plants, § 342-30A(1)(j), clubs, § 342-30A(1)(m), farms, § 342-30A(1)(n), transformer stations and § 342-30A(1)(o), motels.

Section 25.

Section 342-56(A) of the Code of the Village of Mamaroneck is amended by adding the following requirements:

Brewpub

1 for each 3 seats, plus 1 for each 2 employees

Casual food establishment

1 per 150 feet of gross floor area, plus 1 for each 2 employees, but not fewer than 10 spaces

~~Restaurant, brewpub~~

~~1 for each 3 seats, plus 1 for each 2 employees~~

Section 26.

Section 342-56(C) of the Code of the Village of Mamaroneck is amended to read as follows:

C. In the M-1 (Manufacturing) District, off-street parking shall not be required for ~~carry-out restaurants (delicatessens)~~ **casual food establishments**, provided that such uses:

- (1) Have frontage on Fenimore Road; and
- (2) Have public on-street parking fronting the zoning lot on Fenimore Road.

Section 27.

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, the portion of the law declared to be invalid will be deemed a separate, distinct and independent portion and the declaration will not affect the validity of the remaining portions hereof, which will continue in full force and effect.

Section 28.

This law is adopted pursuant to the authority granted by Municipal Home Rule Law § 10(1)(e)(3) and will supersede the provisions of the Village Law to the extent that they are inconsistent with this local law.

Section 29.

This local law will take effect immediately upon its filing in the office of the Secretary of State in accordance with Municipal Home Rule Law § 27.