

Village of Mamaroneck



*Village Hall at the Regatta
P.O Box 369*

*123 Mamaroneck Avenue
Mamaroneck, NY 10543*

<http://www.villageofmamaroneck.org>

OFFICE OF
ROBERT A. SPOLZINO
VILLAGE ATTORNEY

Tel (914) 777-7737
Fax (914) 777-7769

TO: Mayor Torres and the Board of Trustees

FROM: Robert A. Spolzino, Village Attorney
Mary E. Desmond, Deputy Village Attorney

RE: Proposed Local Law L of 2024 (Food Service Establishments and Special Permits)

DATE: May 22, 2024

CC: Charles Strome, Acting Village Manager
Daniel Sarnoff, Deputy Village Manager
Agostino Fusco, Village Clerk-Treasurer
Sally Roberts, Deputy Village Clerk

Per the Board's instruction, we have prepared the attached proposed local law which eliminates the requirement for a special permit for restaurants other than those which operate later than 10 p.m. and the prohibition on fast-food restaurants, carry out restaurants and delicatessens on Mamaroneck Avenue within 200 feet of each other. The amendments required us to propose amendments to several other provisions of the Code.

Sections 1 and 2. The proposed local law modifies the definition of "food service establishment" in both Chapter 281 and Chapter 342 for clarification, without any intent to make substantive change. The definition of "food service establishment," which appears in section 281-3 of the Code (retail checkout bags) and the definitions in Chapter 342 (zoning), defines "food service establishment" as a place that serves food and beverages and that requires "an eating place permit" or is otherwise required by county or state law to be licensed." There is no definition of an "eating place permit" either in the Village Code or the Westchester County Administrative Code. The County issues "food service establishment" permits. Westchester County Administrative Code § 873.441. The County's definition of "food service establishment," however, is far broader than the Village's:

Food service establishment. The term "food service establishment", "service food establishment" or "food establishment" means any fixed or mobile restaurant; drive-in; coffee shop; cafeteria; short-order cafe; delicatessen; luncheonette; grill;

tearoom; sandwich shop; soda fountain; bar; tavern; cocktail lounge; night club; roadside stand; take-out prepared food place; retail bakery; industrial feeding establishment; private, public or nonprofit organization or institution, including: schools; nursing homes; day care centers and hospitals; religious and fraternal organizations routinely serving food; catering kitchens; commissary or similar places in which food is prepared for sale or for service on the premises or elsewhere; and any other establishment or operation where food is served or provided for the public, with or without charge.

Westchester County Administrative Code § 873.420.1(c).

To ground the Village's definition of "food service establishment" in the requirement to obtain a County permit, the proposed local law defines "food service establishment" as any use which "involves the serving of food and/or beverages that requires an eating place permit, a food service establishment permit from the Westchester County Department of Health." That eliminates from the definition uses such as schools, nursing homes, day care centers, and hospitals, where the service of food is incidental, but includes bakeries which are, for some reason, excluded from the County's definition of "eating places." The definition also excludes microbreweries, microdistilleries, microcideries, microwineries, nanobreweries, and brewpubs, which are regulated by section 342-47.1 of the Code.

Section 2. The proposed local law eliminates the term "car service" and replaces it with "drive-through service." Car service has an entirely different connotation that has nothing to do with the preparation or delivery of food. The proposed local law also deletes substantive restrictions from the definition section.

Sections 3 and 4. The proposed local law (a) permits food service establishments, but not fast-food restaurants, in the general commercial districts and in the portion of the manufacturing district near Fenimore Road where "restaurants" are currently allowed; and (b) moves the substantive restrictions from the definitions, where they do not belong, to section 342-45, where they do belong because that section forth the substantive restrictions on food service establishments.

Section 5. The proposed local law changes the heading of Article VII from "standards for Uses Subject to Special Permit Procedure" to "Standards for Particular Uses," because the provisions in that article are not limited in their application to special permit uses.

Section 6. The proposed local law establishes the substantive regulations for food service establishments.

- (a) It requires that food service establishments that are open later than 10 p.m. obtain a special permit unless the use is a cabaret regulated under Chapter 150.
- (b) It eliminates "taverns," since that term is not defined in the Code.
- (c) It applies the prohibition on outdoor counter service and drive-through service, as well as the limitation on counter seats, and the prohibition on delicatessens having tables for on-premises consumption that was in the definitions.

Section 7. The proposed local law moves to the minimum required parking section of the Code the increased parking requirement for fast-food restaurants containing multiple counters that was in the definitions.