

Suspension



## COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

May 9, 2013

Betty Jean Grant  
Chairperson  
Erie County Legislature  
92 Franklin St. – 4<sup>th</sup> Floor  
Buffalo, New York 14202

**RE: LOCAL LAW INTRO 2-1**

Dear Hon. Grant:

The Commissioner of Personnel has brought to my attention a number of legal and administrative concerns regarding Local Law Intro 2-1. Although this local law is well intentioned and I continue to support the concept of a residency requirement, I believe further due diligence is needed before approving this local law. My administration will work collaboratively with your honorable body on achieving this goal in a manner that is lawful and not burdensome to the Erie County Personnel Department.

Please find an attached memo written by the Commissioner of Personnel concerning this subject. If you have any further questions, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink that reads "Mark C. Poloncarz".

Mark C. Poloncarz  
Erie County Executive

Attachment

cc: Joseph Lorigo, Erie County Legislator  
Robert Graber, Clerk of the Legislature

# MEMO

To: County Executive Mark Poloncarz  
From: John W. Greenan, Commissioner of Personnel  
Date: May 8, 2013  
Subject: Erie County Local Law Establishing Residency.

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## BACKGROUND

The current Rules of The Classified Service of Erie County state the following:

1. Residence requirements for municipal positions.

An applicant must be at the time of examination, and for at least one month prior thereto, and at the time of appointment, a resident of the municipality in which appointment is to be made, or any reasonable combination of municipalities both in and outside of New York State contiguous to the municipality in which appointment is to be made, or contiguous to the municipality in which such municipality is located, as determined by the Personnel Officer. Residence requirements may be suspended or reduced by the Personnel Officer where such requirements are disadvantageous to the public interest.

2. Where preference in certification is given to residents of a municipality pursuant to Subdivision 4(a) of Section 23 of the Civil Service Law, an eligible must have been a resident of such municipality for at least one month prior to the date of certification in order to be included in a certification as a resident of such municipality and must be a resident of such municipality at the time of appointment. All changes in residency will become effective on the 15<sup>th</sup> calendar day of the month following the receipt of written notification to the Commissioner of Personnel.

As detailed above, residency currently exists for competitive class employees through the appointment process. The proposed local law would extend residency beyond the appointment process and impose penalties for failure to maintain residency. Additionally, it would create a residency requirement for non-competitive and exempt class employees.

## REVIEW

You have requested that I review the proposed local law establishing residency and determine what impacts, if any, it may have. While the establishment of residency in

and of itself is not a concern, the manner in which the current version of the local law is proposed presents several problems.

First, Section 5, Sub 4 establishes that an employee terminated as the result of the enforcement of the law shall not be eligible for re-employment for a period of 5 years. This directly conflicts with New York State Civil Service Law as well as the Rules of the Classified Service of Erie County. State law requires that when choosing candidates for employment from a civil service eligible list, consideration is given to all eligible that have a score that is equal to or greater than that of the third. This is known as the rule of 3. The proposed local law, if approved as currently written, would require that the terminated employee not be considered even if they re-established residency in Erie County. As this is in direct violation of State Law as well as the Rules of the Classified Service, it would be unenforceable.

Section 6, the Exception Clause, also raises concerns. Although not common, from time to time, we have substantial difficulty recruiting for highly technical and specialized titles. For example, the Director of the Erie County Health Lab. The inability to efficiently recruit for these positions will make it impossible to fill important positions for which we are already having difficulty finding highly qualified candidates that are willing to accept appointment.

As you are aware, the legislative process can be long and cumbersome. If we have a difficult to recruit for position for which we have identified a non-resident candidate, it may take months to gain legislative approval. That may result in the loss of a well qualified candidate. I would suggest as an alternative that the Personnel Officer only be required to report to the Legislature and the County Executive when any appointment is made of a non-resident candidate rather than require a vote to carry out such an essential function that the position of Commissioner of Personnel was in fact designed to perform. This would allow departments to fill important positions in an efficient manner while also giving the legislature their desired oversight.

The Civil Service system, as required by the New York State Constitution, was designed to require hiring based on merit and fitness. The inclusion of the Legislature in the direct hiring process allows politics to interject itself and diminishes the neutral intent of Civil Service Law.

The effective date of this legislation is troublesome. The current version of the Local Law implements an immediate effective date. Multiple processes must be reengineered within this department to implement and/or enforce this law. The immediate implementation will likely place the County in non-compliance. I would propose a January 1 effective date. This would allow the County and Department of Personnel the necessary time to put processes in place. As this law directly conflicts with the Rules of the Classified Service of Erie County, it would require amendment of said Rules. To do so calls for approval from The New York State Civil Service Commission. This is at minimum a 6 month process.

Finally, this local law diminishes the authority of the Executive Branch of Erie County. As such, I believe that the law would be subject to mandatory referendum and therefore immediate implementation would be improper.