

COUNTY OF ERIE

LOCAL LAW NO. 4-1974

LOCAL LAW INHERO. NO. 33 (Print # 4)

1973

A LOCAL LAW amending Local Law No. 1-1960, constituting the Erie County Administrative Code, as amended, by addition of a new Article 9, providing for a Department of Environmental Quality.

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE, AS FOLLOWS:

Section 1. Local Law No. 1-1960, as amended, constituting the Erie County Administrative Code, is hereby amended by adding thereto a new Article 9, to read as follows:

ARTICLE 9

DEPARTMENT OF ENVIRONMENTAL QUALITY

- Section 9.01 - Organization.
- 9.02 - Powers and duties of Commissioner of Environmental Quality.
- 9.03 - Division of Sewerage Management; Deputy Commissioner; Functions.
- 9.04 - Division of Air and Water Quality; Deputy Commissioner; Functions.
- 9.05 - Office of Program Development; Director; Functions.
- 9.06 - Office of Solid Waste Programs; Director; Functions.
- 9.07 - County Environmental Quality Code.
- 9.08 - Transition.

§ 9.01 - Organization. The Department of Environmental Quality shall be headed by a Commissioner. He shall organize the department under the supervision and direction of the County Executive. The Department shall include:

- a) a Division of Sewerage Management; and
- b) a Division of Air and Water Quality; and
- c) an Office of Program Development; and
- d) an Office of Solid Waste Programs.

§ 9.02 - Powers and duties of the Commissioner of Environmental Quality.

a. The Commissioner of Environmental Quality shall have all the functions, powers, and duties provided by the County Charter, by this Code, and by any applicable provision of any Act of the State Legislature not inconsistent with the County Charter or this Code.

b. The Commissioner of Environmental Quality may from time to time delegate such of his powers, duties, and functions as he shall deem appropriate to one or more of his deputies; and any act performed by a deputy pursuant to such delegation shall have the same effect in law as if performed by the Commissioner of Environmental Quality.

c. The Commissioner of Environmental Quality, or any authorized officer or employee of the department, may enter upon any public or private property within the County for the purpose of making any surveys, examinations or investigations necessary or desirable for the exercise of the powers, or the performance of the duties, of the department; provided, however, except in the case of emergency, such entry shall be upon lawful consent of the owner or occupant or pursuant to warrant.

9.03 - Division of Sewerage Management; Deputy Commissioner; Functions. The Division of Sewerage Management shall be headed by a deputy commissioner who shall be a professional engineer licensed to practice in the state of New York and shall either (1) be a graduate of a recognized college or university with a degree in sanitary engineering and five years of sanitary engineering experience, or (2) have a satisfactory

equivalent combination of training and experience.

The Deputy Commissioner shall:

a. provide services and facilities for the operation and management of each county sewer district under the direction of the administrative body appointed, designated, or established in accordance with Article 5-A of the County Law and the Erie County Charter and Administrative Code;

b. assemble data relating to the sewage collection, conveyance, treatment and disposal problems of the county and of its political subdivisions and the elimination or alleviation of such problems;

c. have all the powers and duties of the Erie County Sewer Agency and the Erie County Drainage Agency;

d. analyze and evaluate information for the establishment, development, co-ordination and utilization of sewerage facilities to service other municipalities in the County;

e. prepare maps, plans and cost estimates on sewer facilities, compile economic data in support thereof and coordinate survey results in connection with a master sewer plan;

f. prepare reports on studies and work with local municipalities in the formation of county sewer districts and in connection therewith cooperate with local, state and federal agencies on program hearings and surveys;

g. make studies, conduct investigations and assemble data for the purpose of drainage and to protect property and public health within the county from floods and high waters

and to submit the results of such studies and investigations with his recommendations to the Commissioner of Environmental Quality or to any village, town or city in the county requesting the same.

§ 9.04 - Division of Air and Water Quality; Deputy Commissioner; Functions. The Division of Air and Water Quality shall be headed by a Deputy Commissioner who shall be a professional engineer licensed to practice in the state of New York and shall either (1) be a graduate of a recognized college or university with a degree in engineering and five years of engineering experience or (2) have a satisfactory equivalent combination of training and experience. The deputy commissioner:

a. shall issue or deny permits under such conditions as may be prescribed in the Erie County Environmental Quality Code for the prevention, abatement or control of pollution;

b. may continue any permit heretofore issued under the Erie County Sanitary Code or hereafter issued under the provisions of the Erie County Environmental Quality Code;

c. may revoke or modify any permit heretofore issued under the Erie County Sanitary Code or hereafter issued under the provisions of the Erie County Environmental Quality Code;

d. shall systematically monitor the quality of water and air resources of the County and conduct such other investigations as may be deemed necessary or advisable to carry out the intents and purposes of the provisions of the Erie County Environmental Quality Code.

e. if after investigation it appears that there has been a violation of any of the provisions of the Erie County Environmental Quality Code, he shall forward such information to the Commissioner for appropriate action; if an alleged violation of said code concerns a county facility, he shall also file such information with the Clerk of the Erie County Legislature.

§ 9.05 - Office of Program Development; Director;
Functions. The Office of Program Development shall be headed by a Director who shall have the following functions:

a. he shall make studies, conduct investigations and assemble data concerning the County's role in environmental matters including but not limited to noise pollution, land use and flood control.

b. he shall furnish technical advice, information and recommendations to assist the County Legislature and the County Executive.

§ 9.06 - Office of Solid Waste Programs; Director;
Functions. The Office of Solid Waste Programs shall be headed by a Director who shall have the following functions:

a. he shall make studies, conduct investigations and assemble data concerning the County's role in solid waste matters;

b. he shall furnish technical advice, information and recommendations to assist the County Legislature and the County Executive.

c. he shall administer the County's solid waste operations.

§ 9.07 - County Environmental Quality Code.

a. Adoption procedure. Before adoption of the Erie County Environmental Quality Code or any amendment thereto, the Commissioner of Environmental Quality shall cause notice of a public hearing thereon to be published in the official newspapers and in newspapers of general daily circulation in the County once a week for two publications and at least twenty days shall elapse from the first publication to the date of the hearing. The notice shall contain an abstract statement of the proposed provision and give the time and place of such hearing. On or before the date of the first publication of the proposed provision, copies thereof shall be filed with the clerk of the county legislature, the county executive, the clerk of each City, Town and Village in Erie County and in the office of the Commissioner of Environmental Quality and be open to inspection by the public. If subsequent to this initial public hearing, the Commissioner's preliminary decision is to adopt the proposed Erie County Environmental Quality Code or any amendment thereto, he shall, within 5 days of said preliminary decision, submit a copy thereof to the Clerk of the County Legislature. The County Legislature, at the second regular legislative meeting following such submission at which a quorum is present, may by resolution make a finding that the proposed Code or amendment warrants further consideration. Upon such a finding, the Commissioner shall hold a second public hearing in the same manner as that required for the initial public hearing. Subsequent to this second public hearing, the Commissioner shall either adopt or he shall issue an order declining to adopt the proposed Code or amendment. In the event the County Legislature shall make no finding that further consideration is warranted, the Commissioner's preliminary

decision to adopt the proposed Code or amendment shall become final upon adjournment of the second regular legislative meeting, subsequent to submission of the preliminary decision, at which a quorum is present. All rules, regulations, orders and directions promulgated under this section shall be compiled and known as the Erie County Environmental Quality Code. In the event that provisions of the Sanitary Code promulgated by the Board of Health and provisions of the Environmental Quality Code shall be applicable to the same subject, the more restrictive provision shall control.

b. Enforcement.

1. The Commissioner may prescribe and impose penalties for the violation of or failure to comply with any of his orders or regulations, after holding a hearing thereon. Such penalties shall not exceed ten thousand dollars for a single violation or failure, to be sued for and recovered by the Commissioner in Erie County.

2. (a) The provisions of the County Environmental Quality Code shall have the force and effect of law.

(b) Any non-compliance or non-conformance with any provision of such code or of a rule or regulation, duly made thereunder shall constitute a violation punishable by a fine of not more than two hundred fifty dollars or by imprisonment for not more than fifteen days or both such fine and imprisonment.

(c) Certified copies of the Environmental Quality Code shall be received in evidence in all courts and proceedings.

3. The Commissioner shall have all the authority conferred by state law upon local officials to enforce

orders, rules and regulations pertaining to the control and enhancement of the quality, use or enjoyment of air and water resources.

c. Procedure.

1. Notices; Service or Process.

(a) Notices of all public hearings shall specify the time, date and place of hearing.

(b) Service of all processes, except subpoenas, shall be made in the same manner as a summons in a civil action or by registered or certified mail with a return receipt requested, addressed to the individual served in person or in a representative capacity as hereinafter provided at his last known residence, office or place of business. Such service shall be made upon a municipality by serving the chief executive or counsel thereof, upon a sewer district, authority, commission or private corporation by serving an officer thereof or upon an unincorporated association or partnership or other company of persons which has a president or treasurer by serving either of such officers.

(c) Subpoenas shall be served upon the witnesses personally, together with such fees therefor as may be provided by law.

2. Proceedings before the commissioner.

(a) Whenever it shall appear to the commissioner that there has been a violation of any of the provisions of the Erie County Environmental Quality Code, he shall give written notice to the alleged violator or violators setting forth any thing or act done or omitted to be done or claimed to be in violation of any such provisions, and requiring that the matters complained of be corrected, or that the alleged violator

appear in person or by attorney before the commissioner or his duly designated representative, at the time and place said notice specifies, and answer the charges complained of.

(b) At least twenty days notice of such hearing shall be given.

(c) One day before the return day of such notice, the person so notified shall file with the commissioner a statement setting forth the position of the person so notified, the answer, if any, to the charges made against him, the methods, practices and procedures, if any, which are being taken to prevent violations of the provisions of the Erie County Environmental Quality Code, and any other defenses or information pertinent to the case. Pertinent and relevant testimony of witnesses shall be received in support of or opposition to said statement.

(d) The burden or proof with respect to violations imposed by provisions of the Erie County Environmental Quality Code shall be upon the department.

(e) After due consideration of the written and oral statements, and testimony and arguments filed pursuant to subdivision 2.(c) above or on default in appearance of said return day, the commissioner may issue and enter such final order or make such final determination as he deems appropriate under the circumstances, and shall notify such person or persons thereof in writing, personally, or by registered mail.

3. Hearings.

(a) Public hearings shall be conducted by the commissioner, or his duly designated representative or representatives, prior to issuance of an order directing discontinuance of actions allegedly in contravention of provisions of the Erie County Environmental Quality Code.

(b) The hearings herein provided may be conducted by the commissioner, or by the duly designated hearing officer or officers at any time and place.

(c) A record, or summary thereof, of the proceedings of said hearings shall be made and filed with the Department of Environmental Quality. If requested to do so by any party concerned with said hearing, the full stenographic notes of the testimony presented at said hearing shall be taken and filed. The stenographer shall, upon the payment of his fee allowed by the law therefor, furnish a certified transcript of the whole or any part of his notes to any party to the action requiring the same.

(d) In any such hearing, the hearing officer or any member of the hearing panel, may administer oaths, examine witnesses, and issue, in the name of the department, notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearing. A designation of a person or persons by the commissioner to perform the functions herein authorized shall be in writing and filed with the department.

4. The commissioner is hereby authorized to settle or compromise any action or cause of action for the recovery of a penalty under the provisions of the Erie County Environmental Quality Code as he may deem advantageous to the county.

5. Hearings for persons aggrieved.

The Commissioner shall grant a hearing to any person not previously heard in connection with the making of a determination, or order, who within twenty days after service upon him of a copy of a notice, order or determination of the commissioner, may file a petition with the department alleging that the said order(s) or determination(s) is or are contrary to fact and injurious to him, and that said order or determination caused him damage by the invasion of or interference with a private right or privilege, particularly appertaining to him. At such hearing the petitioner may appear in person or by attorney, present witnesses, submit evidence and be given full opportunity to be heard. Following such hearing, the commissioner shall make his determination, which, unless an appeal is taken therefrom, shall be final and conclusive.

6. Summary action.

Whenever the commissioner, after investigation, is of the opinion that any person is causing, engaging in or maintaining a condition or activity which in his opinion constitutes danger to the health of the people, and that it therefore appears to be prejudicial to the interest of the people, to delay action for twenty days until an opportunity for a hearing can be provided in accordance with the provisions of §9.07 C, the commissioner shall order the person, including any state agency or political subdivision having jurisdiction, by written notice to discontinue such dangerous condition or activity or

take certain action immediately or within a specified period of less than twenty days. As promptly as possible thereafter, within not to exceed twenty days, the commissioner shall provide the person an opportunity to be heard and to present any proof that such condition or activity does not constitute a danger to the health of the people.

7. Review by Courts.

a) All orders or determinations of the commissioner or the department shall be subject to review as provided in article 78 of the Civil Practice Law and Rules. Application for such review must be made within sixty days after service in person or by mail of a copy of the determination, or decision upon the attorney of record of the applicant and of each person who has filed a notice of appearance, or to the applicant in person directly if not represented by an attorney.

b) Any resident of Erie County shall have standing to apply for review of any order or determination of the Commissioner or the Department of Environmental Quality.

§9.08 - Transition.

a. The County Executive is authorized, by executive orders filed with the County Legislature, to provide for the transfer of functions to the Commissioner of Environmental Quality in such stages as he shall consider appropriate. Pending the transfer of any function by such executive order, it shall remain the responsibility of the office or agency in which it has heretofore been vested.

b. The County Executive is authorized, by executive order filed with the County Legislature, to determine the precise

allocation of functions between the Departments of Health and Environmental Quality, pursuant to the general principles provided in Article IX of the County Charter and with due regard to the requirements of eligibility for state aid and reimbursement.

Section 2: This local law shall take effect one (1) month after final approval.

April 16, 1974, Meeting No. 9, Item No. 12, adopted by Legislature
April 16, 1974, Meeting No. 9, Item No. 19, adopted by Committee
May 7, 1974, Meeting No. 11, Item 94, approval by County Executive
May 2, 1974, Public Hearing held in the Office of County Executive
May 3, 1974, copies of LOCAL LAW NO. 4 - 1974 filed with Secretary
of State
May 13, 1974, acknowledgements from Secretary of State of filing.

