NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City
XXXX of Erie
Town
XXXX
Village

Local Law No. 2 **of the year 20** 04

A local law requiring impoundment of vehicles subsequent to an arrest for Driving While Intoxicated/Ability Impaired.
(Insert Title)

Be it enacted by the Legislature *(Name of Legislative Body)* **of the**

County
City
XXX of Erie
Town
XXXX
Village

as follows:

Section 1. Legislative Intent.

The Erie County Legislature hereby finds, declares and determines that:

A. Driving While Intoxicated and Driving While Ability Impaired are serious criminal offenses which have tragic effects on Erie County, New York, and the United States.

B. In order to help law enforcement curb these offenses, the Erie County Legislature is initiating legislation calling for an absolute minimum twelve hour vehicle impoundment when someone is arrested for drunk driving.

C. There are numerous stories and instances of drunk drivers being released from jail on a bond, picking up their car and getting involved in a subsequent serious and/or fatal vehicle accident.

D. Data has shown that vehicle impoundment has been consistently effective in reducing DWI offenses among convicted drinking drivers.

E. First-time offenders who had their vehicles impounded had 25 percent fewer crashes than those who did not; repeat offenders who had their vehicles impounded had 38 percent fewer crashes that those who did not.

F. Even two years after the impoundment, drivers whose vehicles were impounded had at least 35 percent fewer DWI's when compared with those who had not.

G. Various municipalities in Erie County already support vehicle impoundment in DWI cases; however the Erie County Legislature finds that there is the need to make mandatory impoundment an across-the-board punishment to curb drunk driving and save lives.

H. Only through mandatory impoundment can we help to ensure that DWI and DWAI drivers are prohibited from driving until they are completely sober.

Section 2. Short Title.

This Local Law shall be known as "The Erie County DWI/DWAI Vehicle Impoundment Law."

Section 3. Impoundment of Vehicles.

A. Whenever a person has been arrested for a violation of N.Y. Vehicle & Traffic Law Sections 1192(1), 1192(2), 1192(3), 1192(4), 1192(5), 1192(6) and/or 1192-a, the arresting law enforcement agency or its duly authorized agent shall impound and take possession of the vehicle the person was operating at the time of their arrest.

B. A vehicle impounded pursuant to Section 3(A) shall remain in the possession of the arresting law enforcement agency or its duly authorized agent until and when the following conditions are met:

1. the vehicle may be released to the arrestee no earlier than twelve (12) hours after the time of arrest;

2. the vehicle may be released to a party other than the arrestee if:

(a) the vehicle is owned or leased by the individual claiming the vehicle other than the arrestee; or

(b) the vehicle is owned or leased by the arrestee, the arrestee is eighteen or older, and the arrestee gives their written permission, pursuant to the requirements of the arresting law enforcement agency or its duly authorized agent, to another individual to claim the vehicle; or

(c) the vehicle is owned or leased by the arrestee, the arrestee is under eighteen and unemancipated, the vehicle may be released to the parent or legal guardian of the arrestee.

3. A vehicle impounded under this section shall not be released to any person unless the person claiming the vehicle from the arresting law enforcement agency or its duly authorized agent:

(a) presents a valid license, proof of ownership or lawful authority to operate a motor vehicle;

(b) would not be in violation of N.Y. Vehicle & Traffic Law Sections 1192(1), 1192(2), 1192(3), 1192(4), 1192(5), 1192(6) and/or 1192-a in connection with operating the vehicle and is otherwise able to operate the vehicle in a safe manner; and

(c) meets any other reasonable conditions established for release of the vehicle established by the arresting law enforcement agency or its duly authorized agent, including but not limited to, reasonable fees for towing and storage of the vehicle until the time the vehicle is claimed. The arresting law enforcement agency or its duly authorized agent may retain custody of the vehicle until such conditions are complied with or fees paid.

4. Nothing in this Local Law shall be construed to prevent or supercede a court of competent jurisdiction from exercising its authority in connection with the release of a vehicle impounded under this Local Law.

Section 4. Effect of Other Laws

Notwithstanding any provision of this Local Law to the contrary, this Local Law is not intended to supercede or compromise any local, state or federal law, rule or regulation that would authorize the continued impoundment of a vehicle for evidentiary or other legal purposes.

Section 5. Rules & Regulations.

The Erie County Sheriff or the Chief Law Enforcement Officer of any other law enforcement agency in Erie County or their duly authorized agents are hereby authorized to promulgate such rules and regulations that are lawful, necessary and appropriate to implement, enforce or otherwise carry out the purposes of this Local Law.

Section 6. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this Local Law or the application thereof, to any person, individual, corporation, firm, partnership, entity or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order of judgment shall not

affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Local Law or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

Section 7. Effective Date.

This Local Law shall take effect immediately upon its filing with the Secretary of State, in accordance with Section 27 of the New York State Municipal Home Rule Law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. **(Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20_____, in accordance with the applicable provisions of law.
(Name of Legislative body)

2. **(Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)**

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 2004 of the (County)~~(City)(Town)(Village)~~ of Erie was duly passed by the Erie County Legislature on April 1 2004, and was (approved)~~(not approved)~~ ~~(repassed after disapproval)~~ by the Erie County Executive and was deemed duly adopted on April 26, 2004, in accordance with the applicable provisions of law.
(Name of Legislative Body) *(Elective Chief Executive Officer*)*

3. **(Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20_____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20_____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on _____ 20_____, in accordance with the applicable provisions of law.
(Name of Legislative Body) *(Elective Chief Executive Officer*)*

4. **(Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20_____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20_____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20_____, in accordance with the applicable provisions of law.
(Name of Legislative Body) *(Elective Chief Executive Officer*)*

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20_____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November_____ 20_____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 2, above.

Kevin M. Kelly

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: April 29, 2004

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF Erie

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Melissa A. Neuman

Signature

Assistant County Attorney

Title

County
~~City~~
of Erie
~~Town~~
~~Village~~

Date: April 29, 2004

A Public Hearing was held on the foregoing Local Law Intro. No. 2-2004 on Thursday, April 15, 2004, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, JOEL A. GIAMBRA, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 26 day of April, 2004.

A Public Hearing was held on the foregoing Local Law Intro. No. 2-2004 on Thursday, April 15, 2004, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, JOEL A. GIAMBRA, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this ____ day of April, 2004.

_____

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