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Recommendation to Amend the Erie County Charter
Erie County Charter Revision Commission of 2016

Recommendation Intro. No. 169
Recommendation No. _____

Introduced on the Report of the Special Committee on Consolidation and Conformity.

Sponsored by Commission Member _____

The Erie County Charter Revision Commission of 2016 does hereby recommend that Section 2208 be deleted and replaced in its entirety to read as follows:

DELETE SECTION 2208 IN ITS ENTIRETY AND REPLACE IT WITH THE FOLLOWING:

~~Section 2208. Erie County Planning Board. As provided for in New York State General Municipal Law section 239-c, subsection 2 (a), Erie County shall establish a planning board by county charter. Provisions for the composition, qualifications, powers and duties, and bylaws of the planning board are set forth in section 2208 of the Erie County Charter, sub sections (a), (b), (c), (d), and (e) below.~~

a. Composition. The Erie County planning Board shall consist of 13 voting members and 6 non-voting, ex-officio, members as prescribed below:

Voting:

1. One (1) member appointed by the Erie County Executive who is a resident of the City of Buffalo;
2. One (1) member appointed by the Erie County Legislature who is a resident of either of the cities of Buffalo, Lackawanna or Tonawanda;
3. One (1) member appointed by the Erie County Executive who is a resident of one of the ten (10) most populous towns in Erie County, as determined by the most recently completed census.
4. One (1) member appointed by appointed by the Erie County Legislature who is a resident of one of the ten (10) most populous towns in Erie County, as determined by the most recently completed census.
5. One (1) member appointed by the Erie County Executive who is a resident of one of the remaining towns within Erie County;

6. One (1) member appointed by the Erie County Legislature who is a resident of one of the remaining towns within Erie County;
7. One (1) member appointed by the Erie County Executive who is a resident of one of the eight (8) most populous villages in Erie County, as determined by the most recently completed census.
8. One (1) member appointed by the Erie County Legislature who is a resident of one of the remaining villages in Erie County;
9. One (1) member appointed by the Erie County Executive who is a professional planner, certified by the American Institute of Certified Planners, or who has a Master's or Bachelor's Degree in City and Regional Planning from an institution accredited by the Planning Accreditation Board.
10. One (1) member appointed by the Erie County Legislature who is a professional planner, certified by the American Institute of Certified Planners or who has a Master's Degree from an institution accredited by the American Planning Association.
11. One (1) member appointed by the Erie County Legislature who shall be a municipal planner or a member of a municipal planning board and who shall be selected based on a recommendation of up to three people made by the Association of Erie County Governments;
12. One (1) member appointed by the Erie County Executive who is affiliated with a for-profit organization involved in real estate sales, development, or construction;
13. One (1) member appointed by the Erie County Executive who is affiliated with a not-for-profit organization whose mission is related to the improvement of land use, transportation, equitable public investment, and/or preservation of the built/natural environment.

Non-Voting: All non-voting members shall be ex-officio members consisting of the following:

1. The Commissioner of the Department of Environment and Planning;
2. The Commissioner of the Department of Public Works;
3. The President of the Erie County Industrial Development Agency;
4. The Executive Director of the Greater Buffalo Niagara Regional Transportation Council.
5. The chairperson of the Environmental Management Council, or such person's designee; and
6. The chairperson of the Agriculture and Farmland Protection Board, or such person's designee.

b. Qualifications.

- i. Each planning board member shall be a resident of Erie County and shall remain a resident while holding a position as a member of the planning board. Furthermore, prior to appointment, each planning board voting member shall have demonstrated to the appointing authority a verifiable involvement in or advocacy for the improvement of land use, real estate development, equitable public investment, growth management, transportation, the environment, or regional, urban, or rural planning for a period of not less than three years.
- ii. No person shall be reappointed as a voting member unless such person has, for each year as a voting member, fulfilled the current training and continuing education requirements for Planning Board members as established by the State of New York.
- iii. No person who is currently serving as an elected official shall be appointed to the Planning Board.

c. Term of Planning Board Members.

- i. Voting members shall be appointed to serve for a term of three (3) years except that the terms of the initial voting members shall be established in the Bylaws consistent with section e below.
 - ii. No person shall serve more than two (2) consecutive three-year terms as a voting member on the Board, including the completion of a term of another voting member. Any previous member who has served such two (2) consecutive three-year terms shall not be eligible to serve again until two (2) years following the last date of the most recent of such consecutive terms served.
- d. Powers and Duties. The Erie County Planning Board shall have the following powers and duties:
 1. To conduct reviews of all Type 1 Actions as defined by the State Environmental Quality Review Act (SEQRA) Implementing Regulations 6.N.Y. C. R. R. Part 617 of planning and zoning actions by a town, city, or village as said actions are so defined in sections 239-m and n of New York State General Municipal Law (NYS GML). The purpose of said reviews shall be to bring pertinent countywide planning considerations to the attention of the sponsoring and neighboring municipality. Factors to consider in such reviews shall include but not be limited to:
 - i. Compatibility of various land-uses with one another;
 - ii. Traffic generating characteristics of various land-uses relative to county infrastructure;
 - iii. Impact of proposed land-uses on existing and proposed county institutional or other uses;
 - iv. Official county and municipal development policies as may be expressed through comprehensive plans, capital programs or regulatory measures;
 - v. Such other matters as may relate to achieving an efficient and attractive built environment.
 2. To advise the County Executive and the Erie County Legislature on all matters relating to regional planning and long-term development patterns.
 3. To assist the County's Department of Environment and Planning in preparing a comprehensive plan and other studies relevant to the future growth, development, and preservation of the built and natural environment, along with the successful implementation of legacy planning documents like the Erie Niagara Framework for Regional Growth and One Region Forward.
 4. All other planning and zoning referrals defined in section 239 m of NYS GML that do not qualify as Type 1 actions under SEQRA shall be reviewed by the Deputy Commissioner of Planning consistent with section 9.03 of the Erie County Administrative Code.
- e. Bylaws. The Erie County Planning Board shall have the authority to adopt, by a majority vote of its members, bylaws which prescribe initial term limits, attendance, quorum, officers, meeting notifications, conflicts of interest, and other administrative matters.

**Introducer's Memorandum of Support to
Erie County Charter
Recommendation Intro. 169
Section 2208**

Sponsor: _____

The intention of this recommendation is to re-establish a planning board for Erie County and to prescribe its membership, duties, and responsibilities.

The existing Charter includes an "Erie and Niagara counties regional planning board," which no longer exists and would be deleted.

Municipal and regional planning is a good idea. But, municipal and regional planning is not *just* a good idea. In fact, it is also a function of New York State General Municipal Law (GML), which carefully articulates the importance of regional planning in Article 12-B, sections 239-1, m, & n. Enumerated in these sections is the requirement that certain planning and zoning actions taken by cities, towns and villages be referred to a county planning agency or regional planning council for inter-community or county-wide considerations before the local municipality takes final action.

The types of planning and zoning actions required for referral are fully laid out in section 239-m, 3(a) and (b) and 239-n, 3 (a) and (b) of the state statute. These municipal zoning actions include, among other things, the adoption of a comprehensive plan and the approval of site plans and subdivision plats when said plans apply to real property that is within 500 feet of: the boundary of any city, village, or town; the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; and more (see GML 239-m, 3(a) & (b) and 239-n for a complete listing).

Under the statute, the county planning agency or regional planning council has 30 days to review any proposed action to which it has been referred and "shall recommend approval, modification, or disapproval, of the proposed action, or report that the proposed action has no significant county-wide or inter-community impact." If the county planning agency, "fails to report within such period [30 days], the referring body may take final action on the proposed action without such report."

To address the requirements laid out by state GML above, Erie County has vested the authority to review and respond to approximately 800 referrals annually in *one individual*, namely the Deputy Commissioner of the Department of Environment and Planning.

An Erie County Planning Board is important for many reasons, but two warrant special attention:

1. **To improve the existing process for 239 referrals.** As established earlier, those matters to be reviewed by the county planning board are a function of state law and, with the exception of subdivision reviews, are *already required* to be reviewed by the Deputy Commissioner of Planning, a single individual who serves at the pleasure of the County Executive and has the unilateral power to approve or disapprove of municipal zoning referrals. The process of approving/disapproving of municipal planning and zoning referrals should represent a *best practice model*. It should give voice to diverse stakeholders from large, small, and rural communities, as well as business and non-profit leaders with relevant experience and qualifications, who are chosen by *both* the Executive and the Legislature.

Simply put, establishment of an Erie County Planning Board takes approval power away from the County Executive and puts it in the hands of thirteen individuals selected by both branches of government, who bring a regional perspective and better represent the interests of the whole county.

2. **To advise the County on how development projects impact our massive infrastructure network.** There are 2,450 lane miles and 294 bridges that comprise the County's massive road network. This is more than the states of Hawaii, Rhode Island, and Delaware. In addition, twenty-five municipalities receive some or all of their sewer infrastructure from the County system, which includes over 1,000 miles of sewer lines and seven sewer treatment plants. County sewers and highways are critical infrastructure needed to support most new residential and commercial development within our 44 municipalities. Yet a county planning board that can review major site plans and subdivisions relative to their impact on this County infrastructure does not exist.

This twisted reality is true only in Erie County. Virtually all other counties in New York have planning boards, as do ALL of the county's 44 municipalities, which help guide development and examine its impact on their infrastructure capacity. Given the cost of Erie County's massive infrastructure on county taxpayers, we simply cannot afford to go without the benefit of this diverse examination.

Some misconceptions of an Erie County Planning Board must be addressed.

1. **It creates another layer of government.** With the exception of 239-n, the establishment of a county planning board does NOT create another layer of government. As stated in the Erie County Code, all 239-m reviews are already required to be reviewed by the Deputy Commissioner for Planning. *Instead, establishment of the planning board replaces an existing process with a best practice.*
2. **It will slow down the process.** As explained earlier, NY state law requires the county planning agency to approve, modify, or disapprove 239 referrals within 30 days. If it "fails to report within such period, the referring body may take final action on the proposed action without such report."
3. **It takes away local control.** In fact the opposite is true. The proposed charter change, which invites 13 individuals from urban, suburban, and rural communities into the process, *gives more voice to local municipalities*, who currently have no say in the County's review of 239 referrals. Plus, a planning board cannot change NY State's "home rule" statute, where ultimate authority rests with the local municipality.

Establishment of an Erie County Planning Board represents a *best practice* way of conducting the municipal planning and zoning referrals required by NYS GML sections 239 l, m, and n. It does not create another layer of government, slow down the process, or take away local control. It also represents a best practice way of ensuring appropriate attention is paid to the impact of development decisions on county infrastructure.

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| | YES | NO | NOT PRESENT | ABSTAIN |
|-------------------------|-----|----|-------------|---------|
| Todd J. Aldinger | | ✓ | | |
| Joseph T. Burns | | ✓ | | |
| Tara Cadmus | | | ✓ | |
| Diana K. Cihak | ✓ | | | |
| Keith E. Dash | | | ✓ | |
| Kenneth J. Farrell | | ✓ | | |
| Peter J. Galie | | ✓ | | |
| Christina G. Holdsworth | | ✓ | | |
| Timothy M. Hudson | | ✓ | | |
| Matthew J. Kibler | ✓ | | | |
| Peter M. Kooshoian | ✓ | | | |
| Rashied McDuffie | ✓ | | | |
| Cheryl Meyers-Buth | ✓ | | | |
| Sibu S. Nair | ✓ | | | |
| Tiffany R. Perry | ✓ | | | |
| David Pollack | | ✓ | | |
| Myra E. Robinson-Moses | ✓ | | | |
| Mary A. Stang-Cooke | | ✓ | | |
| Jeanne M. Vinal | ✓ | | | |

AYES 9

NOES 8