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# COUNTY OF ERIE

**MARK C. POLONCARZ**

COUNTY EXECUTIVE

June 18, 2013

Robert Graber  
Clerk of the Legislature  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

**RE: Veto Message - Local Law Intro. No. 2-2013**

Dear Mr. Graber:

A certified copy of Local Law Intro. No. 2-2013, entitled the "*ERIE COUNTY EMPLOYEE RESIDENCY REQUIREMENT ACT*," was presented to me for approval on May 24, 2013. A public hearing regarding this Local Law was duly held before me on June 7, 2013. Pursuant to Erie County Charter Section 205, I hereby disapprove and VETO Local Law Intro. No. 2-2013 (Intro 2-2013) for the reasons stated herein.

A local law is subject to mandatory referendum if it abolishes, transfers or curtails any power of an elective officer. Pursuant to Section 3 of the Erie County Charter, the County Executive has the authority to appoint the head of every department and other administrative unit of the county. While, in some cases, these appointments are subject to confirmation after the fact, in the first instance the appointments themselves are at my discretion. According to Intro 2-2013, should the Commissioner of Personnel deem it impossible for me to make a discretionary appointment from the pool of current county residents, Section 6 effectively transfers such discretion to the county Legislature. By granting the Legislature unilateral authority to determine the propriety of an out of county appointment, the authority granted to the County Executive by the Charter becomes subject to and conditioned upon the discretion and political fancy of the members of the Legislature. My hiring decisions have always been made and will always be made based on what I deem to be in the best interests of county residents. Supplanting my judgment with the political vagaries of the Legislature is unacceptable. This is a clear attempt to dilute the County Executive's power and, therefore, Intro 2-2013 requires voter approval by mandatory referendum in order for it to become operative.

In addition, when the drafters of 2-2013 curiously chose to require a super-majority vote of the legislature in order to "suspend" the law for purpose of an individual appointment, they inadvertently put in place a second condition which has been found, in other circumstances, to trigger the necessity of voter approval. The New York State Attorney General has opined while a county's home rule authority includes the authority to pass a local law requiring a super-

majority to take certain actions as a body, the operative nature of such a local law is conditioned upon voter approval by mandatory referendum. Op. Att'y Gen. No. 2007-5 states:

A local law that requires more than the simple majority that would otherwise suffice to adopt a resolution would, in our opinion, curtail the voting power of the members of the County Legislature, who are elective officers. Such a local law would have the effect of reducing the proportional impact of each legislator's vote....and thus would curtail each legislator's relative ability to cast the deciding vote. Therefore, such a local law is subject to mandatory referendum.

Again, the County legislature is not allowed to act on these matters. It is up to the voters of Erie County to decide.

There are some members of the County legislature who have opined that the legislation should become law despite its obvious legal flaws. Those members, some of whom are actual attorneys, have stated that the severability clause will protect portions of the law even if others are stricken by a court. First, I am shocked at the willingness of law makers to pass legislation knowing that it is not legal. Second, a severability clause does serve to protect sections of a law when other portions have been ruled illegal, but such analysis is not applicable in this case. Severability clauses, while they appear in almost every piece of legislation, have only a practical applicability when the law is complex and attempts to accomplish multiple things. This law has only three substantive sections: the residency policy (Section 4), the enforcement (Section 5) and the exception (Section 6). If any one of these sections is deemed unconstitutional or otherwise illegal, the whole law crumbles. For example, if Section 5 is ruled illegal, then there is no enforcement and no penalty and the law is meaningless. If the policy itself is thrown out then there is no law. Similarly, if the exception section is deemed illegal, the whole law fails because it would then apply retroactively. Thus, legislators relying on the severability clause have not adequately analyzed their own proposal and, in effect, have passed a flawed law they do not understand, or worse, knew was flawed but passed it anyway.

Beyond the requirement of a referendum, there are other significant problems with this legislation. Section 5(4) of Intro 2-2013 states that "an employee terminated as the result of enforcement of this law shall not be eligible for re-employment with the County until a period of five years from the date of his or her termination has expired." A five year ban on county employment is excessive. There is no rational relation between the presumed legitimate governmental interest of establishing a residency requirement and a five year ban on employment eligibility. Such harsh action does not work towards the advancement of any legitimate governmental purpose and is in contravention with general civil service requirements of New York State.

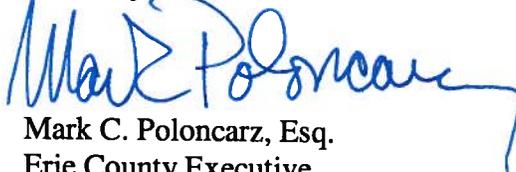
Moreover, the first paragraph of the exception clause found at Section 6 of Intro 2-2013 states that "This law shall not apply to employees appointed to their position before its effective date. However, no person shall remain an exception to this law if their employment with Erie County lapses for any reason, other than a non-voluntary employment layoff." This poorly

drafted phrasing grants any individual in County employ prior to the effective date of Intro 2-2013 the unfettered ability to relocate out of county at his/her discretion so long as there is no qualified break in service. This glaring loophole renders Intro 2-2013 hollow at its core and effectively prevents it from being able to achieve its intended result: require County employees to reside in Erie County. This loophole is either unintended, or, if intended, calls into question the true purpose behind the drafting of this legislation.

Finally, as you know, a condition to the recently negotiated lease of Ralph Wilson Stadium to the Buffalo Bills requires the Erie County Sheriff's Office ("Sheriff") to provide certain security services on game days. As you also know, the staffing plan which has been developed by the Sheriff includes a significant allocation of peace officers from other jurisdictions, some of which are outside the County, to act as deputies during games. These deputies will be employed on a part time basis by Erie County. The Sheriff's ability to provide the agreed upon security services to the Buffalo Bills will be severely compromised should Intro 2-2013 become law and restrict his ability to hire those part time officers who reside outside of Erie County. This law significantly undermines the County's ability to abide by the terms of the Buffalo Bills contract, the very same contract which the County Legislature approved unanimously and with much fanfare.

While I had previously indicated support for the general premise of a local residency law, given the poor drafting and inherent flaws contained within this proposed legislation, I cannot approve of same and hereby VETO Local law Intro. No. 2-2013.

Sincerely,



Mark C. Poloncarz, Esq.  
Erie County Executive

MCP/gk

cc: Erie County Fiscal Stability Authority  
John Greenan, Personnel Commissioner

COUNTY OF ERIE

LOCAL LAW INTRO. NO. 2-2013

LOCAL LAW NO. \_\_\_\_\_-2013

A LOCAL LAW establishing a residency requirement for employees of Erie County.

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

**SECTION 1. TITLE.**

This law shall be known as the "Erie County Employee Residency Requirement Act"

**SECTION 2. INTENT.**

Passage of this law will mandate that all employees of Erie County are residents of Erie County. Through its passage, the Erie County Legislature recognizes that employee residency:

1. Enhances the quality of employee performance, through greater personal knowledge of Erie County and its social, economic and municipal geography; and
2. Enhances the quality of services that the county provides to residents; and
3. Instills in county employees a greater personal stake in the condition and stability of the county.

**SECTION 3. DEFINITIONS.**

Whenever used in this Local Law, the following terms shall be defined as follows unless the context or subject matter otherwise requires:

- A. "County" shall refer to Erie County, New York.
- B. "Domicile" shall refer to an individual's legal residence and the place where an individual primarily lives, eats, sleeps, is eligible to vote and maintains usual household effects, and where that individual returns to whenever temporarily absent.
- C. "Employee" shall refer to any individual who is employed by and directly works for any department, branch or division of Erie County, including department heads and discretionary/managerial confidential employees of elected officials,

but excluding employees of Erie Community College or Erie County Medical Center Corporation.

- D. "Non-voluntary employment layoff" refers to the termination of county employment based solely on an act of the legislature or through passage of the annual county budget.
- E. "Re-employment" refers to an employee's re-appointment to county service after a discharge.
- F. "Resident" refers to a domiciliary of the County.

**SECTION 4. ERIE COUNTY EMPLOYEE RESIDENCY POLICY**

- 1. Each employee of Erie County shall be a resident of Erie County at the time of his or her appointment and during the entirety of his or her employment.
- 2. An employee's residence of record shall be his or her domicile.

**SECTION 5. ENFORCEMENT AND PENALTIES.**

- 1. This law shall be enforced by the Erie County Commissioner of Personnel. The Commissioner of Personnel is authorized to make the final determination and verification of an employee's compliance with this law. If an employee in good-standing is found to be in violation of this law, the Commissioner of Personnel shall inform the legislature in writing of the violation and the date of the impending termination.
- 2. The Erie County Comptroller shall on an annual basis confirm to the legislature that the county is compliant with the provisions set forth in this law.
- 3. An employee found in violation of the residency requirement of this law shall have his or her employment with the County terminated.
- 4. An employee terminated as the result of enforcement of this law shall not be eligible for re-employment with the County until a period of five years from the date of his or her termination has expired. After five years, re-employment consideration shall only be offered to individuals that have been county residents for one consecutive year or more.

**SECTION 6. EXCEPTION CLAUSE.**

This law shall not apply to employees appointed to their position before its effective date. However, no person shall remain an exception to this law if their employment with Erie County lapses for any reason, other than a non-voluntary employment layoff.

In the event it is deemed by the Commissioner of Personnel to be impossible to fill a vacancy with a current resident of Erie County, a super-majority vote of the

legislature shall suspend the law for the purposes of an individual appointment. The non-resident candidate for employment shall establish residency within six months of his or her appointment. The request for the law's suspension shall come in writing from the independently elected official charged with executing the department for which the employment applicant will work, accompanied by the following signed statement from the Commissioner of Personnel:

"I hereby affirm that without a temporary suspension of the Erie County Employee Residency Requirement Act it is impossible to recruit the most qualified candidate to serve as JOB TITLE. Therefore, I support ELECTED OFFICIAL/TITLE's request for suspension. I understand that, with your approval, this suspension is only applicable to this hire."

\_\_\_\_\_  
NAME

Erie County Commissioner of Personnel

**SECTION 7. 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 or 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 law, or in its application to the person, individual corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**SECTION 8. EFFECTIVE DATE.**

This Local Law shall take effect on the first day of the month immediately following its approval.

**SPONSORED BY**

**LEGISLATOR JOSEPH C. LORIGO**

# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., May 23, 2013

TO WHOM IT MAY CONCERN:

**I HEREBY CERTIFY**, *That at the 10th Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the Twenty-Third day of May, 2013 A.D., a Resolution was adopted, of which the following is a true copy:*

AYES: 6  
NOES: 5

REFERENCE: Local Law Intro No. 2 (Print No. 1) 2013

ATTEST



ROBERT M. GRABER

*Clerk of the Legislature of Erie County*

Comm. 13E-1

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