



ECLEG JUN 28 '14 11:00:05

COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

June 19, 2014

Hon. Scott Kroll, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

**RE: Local Law No. 2-2014 – A Local Law Providing for Penalizing
Private Land Holders for Allowing Consumption of Alcohol
By Minors, Other than Dependents of the Land Holders
On Said Property
Our File No. 22-20140005**

Dear Hon. Kroll:

Enclosed please find an original of the above-referenced Local Law for filing in your office.

Thank you.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 

Gregory P. Kammer
Assistant County Attorney

GPK/dkw
Enclosure

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 Town Village
(Select one.)

of Erie

Local Law No. 2 of the year 2014

A local law providing for penalizing private land holders for allowing consumption of alcohol by minors,
(Insert Title)
other than dependents of the land holders, on said property.

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

County City Town Village
(Select one.)

of Erie

as follows:

SECTION 1. LEGISLATIVE INTENT

A. The Legislature of the County of Erie finds that underage drinking is a significant societal problem that has generated widespread concern in Erie County. Although the New York State Legislature has acted to prevent the unlawful giving, selling and possessing of alcohol in relation to individuals under the age of 21, it has not regulated the situation where a person who is 21 years old or more knowingly allows the consumption of alcohol by a minor in his or her home or other privately owned property. The underage consumption of alcohol, whether at a party or a smaller gathering, poses an immediate threat to the public health, safety and welfare of the residents of Erie County, often leading to alcohol abuse by minors, physical altercations, accidental injuries, neighborhood vandalism, excessive noise disturbances requiring the intervention of local law enforcement, and the commission of violent crimes including sexual offenses and serious assaults. This local law will serve to deter the consumption of alcoholic beverages by minors by holding those persons who are 21 years old or more responsible when they knowingly allow the consumption of alcoholic beverages by minors at their residences or on their privately owned property.

SECTION 2. DEFINITIONS

Wherever used in this chapter, unless the context or subject matter otherwise requires:

A. "Alcohol" shall mean ethyl alcohol, hydrated oxide of ethyl or spirits of wine, from whatever source or by whatever means produced.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

B. "Alcoholic beverage" shall mean any liquor, wine, beer, spirits, cider or other liquid, or solid, patented or not, composed of, or containing, alcohol or spirits, whether or not brewed, fermented or distilled, and capable of being consumed by a person, except that confectionery containing alcoholic as provided by subdivision twelve of section two hundred of the New York State Agriculture and Markets Law shall not be regarded as an alcoholic beverage within the meaning of this section.

C. "Allow" shall mean to give permission for, or approval of, possession or consumption of alcohol or an alcoholic beverage, by any of the following means:

- a. in writing;
- b. by oral statement; or
- c. by any conduct that would cause a reasonable person to believe that permission or approval has been given.

D. "Controls a private residence" shall mean possesses authority to regulate, direct, restrain, superintend, control or govern the conduct of other individuals on or within that residence, and includes, but is not limited to, a possessory right.

E. "Knowingly" shall mean to be aware of.

F. "Minor" shall mean any person under the age of twenty-one.

G. "Reasonable correction action" shall include, but not be limited to:

- a. making a prompt demand that such minor refrain from further consumption of the alcoholic beverages; or
- b. if such minor does not comply with such request, either promptly reporting such underage consumption of alcohol:
 1. to the local law enforcement agency; or
 2. to the minor's parent or guardian.

H. "Residence" shall mean any home, apartment, condominium, co-operative unit or other dwelling unit of any kind, including yards and open areas adjacent thereto.

SECTION 4. UNLAWFUL CONSUMPTION OF ALCOHOL BY A MINOR AT A RESIDENCE

A. It shall be unlawful for any person who is 21 years old or more who owns, rents, or otherwise controls a private residence, to knowingly allow the consumption of alcohol or alcoholic beverages by one or more minors on such premises or to fail to take reasonable corrective action upon becoming aware of the consumption of alcohol or alcoholic beverages by one or more minors on such premises.

B. The provisions of subdivision (a) of this section shall not apply to:

- a) the consumption of alcohol or alcoholic beverages by a minor whose parent or guardian has given such alcohol or alcoholic beverage to such minor;
- b) the use and consumption of alcohol or alcoholic beverages by a minor for religious purposes; or
- c) the use or consumption of alcohol or alcoholic beverages by a minor who is a student in a curriculum licensed or registered by the New York State Education Department and the student is required to taste or imbibe alcoholic beverages in courses which are a part of the required curriculum, provided such alcoholic beverages are used only for instructional purposes during class conducted pursuant to such curriculum.

SECTION 5. PENALTIES AND ENFORCEMENT

A violation of SECTION 4 of this law shall constitute a violation of law for the first and second offense, and a misdemeanor for the third and subsequent offenses. Each offense and subsequent offense shall be punishable as follows:

- A. First offense. Any person who violates Section 4 of this chapter shall be punished by a fine of **two hundred and fifty dollars**, where such violation constitutes the person's **first offense** in violation of this provision.
- B. Second offense. Any person who violates Section 4 of this chapter shall be punished by a fine of **five hundred dollars**, where such violation constitutes the person's **second offense** in violation of this provision.
- C. Third and subsequent offenses. Any person who violates Section 4 of this chapter shall be punished by **either a fine of one thousand dollars, a term of imprisonment not to exceed one year, or both**, a fine of one thousand dollars and a term of imprisonment not to exceed one year, where such violation constitutes the **person's third or subsequent offense** in violation of this provision.
- D. This local law may be enforced or held active by any Police agency with authority for enforcement within their jurisdiction.

SECTION 6. EFFECT ON OTHER LAWS

The provision of Section 4 of this chapter shall not in any way affect the application of any other law, where appropriate, including but not limited to New York State Penal Law section 260.10 (Endangering the welfare of a child) and section 260.20(2) (Unlawfully dealing with a child in the first degree).

SECTION 7. SEVERABILITY

If any clause, sentence, paragraph, or section of this chapter shall be held invalid by any court of competent jurisdiction, or the application of this chapter to any person or set of circumstances shall be held invalid, such invalidity or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or operation of this chapter directly involved in the controversy in which the judgment shall have been rendered. To further this end, the provisions in this chapter are hereby declared to be severable.

SECTION 8. REVERSE PREEMPTION

This chapter shall be null and void on the day that federal or statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this chapter, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Erie. The County Legislature may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation or pertinent preempting state or federal regulations have been enacted for purposes of triggering the provisions of this section.

SECTION 9. EFFECTIVE DATE AND APPLICABILITY

This Local Law shall be effective immediately following filing in the Office of the Secretary of State and shall apply to all prohibited instances on or after the effective date of this local law.

Sponsored By: **Legislator Dixon**
 Legislator Rath
 Legislator Mills
 Legislator Morton

(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 20¹⁴ of the (County)(City)(Town)(Village) of Erie was duly passed by the Erie County Legislature on May 8, 20¹⁴, and was (approved)(~~not approved~~)
(Name of Legislative Body)
(~~repassed after disapproval~~) by the Erie County Executive and was deemed duly adopted
(Elective Chief Executive Officer)*
on June 13, 20¹⁴, in accordance with the applicable provisions of law.

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)
(Name of Legislative Body)
(repassed after disapproval) by the _____ on _____ 20____.
(Elective Chief Executive Officer)*

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.

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)
(Name of Legislative Body)
(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.

* 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.



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

Date: 6/19/14

(Seal)

A Public Hearing was held on the foregoing Local Law Intro. No. 1-2014 on June 4, 2014, 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, MARK C. POLONCARZ, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 13 day of June, 2014.


Mark C. Poloncarz

A Public Hearing was held on the foregoing Local Law Intro. No. 1-2014 on June 4, 2014, 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, MARK C. POLONCARZ, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this ____ day of June, 2014.

Mark C. Poloncarz