



EGLEB 4421305 3-18

COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

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FIRST ASSISTANT COUNTY ATTORNEY

DEPARTMENT OF LAW

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

April 9, 2015

Hon. Karen McCarthy
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York, 14202

Re: Local Law No. 1-2015
Our File No.: 22-20140021

Dear Hon. McCarthy:

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/ncd
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. 1 of the year 2015

A local law in relation to the regulation of electronic ("e-cigarettes")
(Insert Title)

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 Findings and Intent

The Legislature hereby makes the following findings and determinations:

- a) The Legislature hereby finds and determines that high-tech smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, are presently available to consumers and largely unregulated. Consumers inhale vaporized liquid nicotine through these e-cigarettes which is created by heat through an electronic ignition system. The vapors are expelled through a cartridge that usually contains a concentration of pure nicotine. The cartridge and ignition system are housed in a device that may look like a traditional cigarette, cigar or pipe. After inhaling, the user then exhales the aerosol producing a "cloud" of substances that is virtually indistinguishable from cigarettes, cigars and pipes.
- b) The Legislature also finds that the United States Food and Drug Administration has warned that laboratory analysis of electronic cigarette samples has found that they contain carcinogens and toxic chemicals such as diethylene glycol, an ingredient used in antifreeze.
- c) The Legislature also finds that Andrew Hyland, PhD., Chairman, Department of Health Behavior at Roswell Park Cancer Institute stated in remarks for the New York State Senate Health Committee regarding e-cigarettes and liquid nicotine on May 12, 2014 that, "...exposure to second-hand vapor is also a concern. Work in our labs has shown that e-cigarettes are not emission free. E-cigarette emissions include nicotine, acrolein (which is commonly used as a weed killer), formaldehyde and other chemicals. While this exposure is less than traditional cigarettes, these

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

page 1 of 6

these chemicals are still present. Just because it's a smaller amount of poison than that observed for cigarettes doesn't mean secondhand vapor is safe."

- d) The Legislature also finds that the nicotine content in e-cigarettes can vary in doses and presents a significant risk of rapid and/or continual addiction.
- e) The Legislature also finds that it is not in the best interests of the County or its residents to permit the use of e-cigarettes in public.
- f) The Legislature also determines that protecting Erie County residents from untested Nicotine products like e-cigarettes represents sound public health and fiscal policy.
- g) Therefore, the purpose of this Local Law is to prohibit the smoking of e-cigarettes and like products in public places where traditional forms of smoking are already disallowed.

Section 2: Definitions

As used in this Local Law, the following terms shall have the meanings indicated:

- a) "Electronic cigarette" or "e-cigarette" shall mean any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or vape pen, or under any other product name or descriptor.
- b) "Electronic cigarette cartridge" or "e-cigarette cartridge" means a component of an e-cigarette that may contain liquid nicotine or any other substance.
- c) "Business" shall mean a sole proprietorship, corporation, limited liability company, partnership or other enterprise in which the primary activity is the sale, manufacture or promotion of e-cigarettes, e-cigarette cartridges, e-cigarette cartridge filler, or accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is merely incidental. A Business shall include but not be limited to a lounge where e-cigarette use is permitted as well as any establishment which sells e-cigarette materials.
- d) "Certified E-Cigarette Business" shall mean any Business as defined above in Section 2(c) which the Erie County Health Department registers as a Certified E-Cigarette Business pursuant to the terms and conditions of Section 5 herein.

- e) "Commissioner" shall mean the Erie County Commissioner of Health.
- f) "Department" shall mean the Erie County Department of Health.

Section 3: Restrictions on the use of E-Cigarettes

The use of electronic cigarettes shall not be permitted and no person shall use electronic cigarettes in indoor areas open to the public in which smoking is prohibited or restricted pursuant to New York State Public Health Law Section 1399- o.

Section 4: Enforcement

- a) The Commissioner shall have sole jurisdiction to enforce the provisions of this local law.
- b) If the Commissioner determines after notice and hearing that a violation of section 3 of this local law has occurred, the Commissioner may impose a civil penalty in the minimum amount of \$300, but not to exceed \$1,000 for a first violation, and a minimum of \$500, but not to exceed \$2,000 for each subsequent violation. Nothing herein shall be construed to prohibit the Commissioner from commencing a proceeding for injunctive relief to compel compliance with this local law.
- c) Hearings held pursuant to the authority of this local law shall be conducted in accordance with the procedures set forth in the Erie County Sanitary Code by the Commissioner or his or her designee.
- d) The decision of the Commissioner shall be reviewable pursuant to Article 78 of the New York Civil Practice Law and Rules.
- e) The Erie County Attorney may bring an action in the name of Erie County or the Erie County Commissioner of Health to recover the civil penalty provided by this local law in any court of competent jurisdiction.

Section 5: Business Registration

Any Business which relies on the provision of on-site sampling as a mechanism to market and/or sell e- cigarettes, e-cigarette cartridges or e-cigarette cartridge fillings and accessories may register with the Department as a Certified E-Cigarette Business. The Department shall develop, and make available to Businesses, a certification form by which a Business may certify that it meets the definition of Business contained within this local law. The certification will also include any provisions which the Department finds necessary to protect the health and safety of the residents of Erie County. When a Business completes the certification form to the Department's satisfaction, the Department shall add such Business to a registry of Certified E-Cigarette Businesses which it shall control and maintain.

Section 6: Application

- a) The restrictions contained in Section 3 of this local law shall not apply to Businesses registered as Certified E-Cigarette Businesses pursuant to Section 5 above or to individuals while they are patronizing a Certified E-Cigarette Business. Otherwise, the terms and conditions of this local law shall have general effect county-wide.
- b) No provisions herein shall be construed to limit or preclude the exercise of any authority of the Commissioner or Department provided by any local, state, or federal law, rule, or regulation.

Section 7: Reverse Preemption

This local law shall be null and void on the day that state-wide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, 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 Erie County Legislature shall determine by resolution whether or not identical or substantially similar state-wide legislation has been enacted for purposes of triggering the provisions of this section.

Section 8: Severability

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, or Business 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 specific application.

Section 9: Effective Date

This local law shall become effective upon filing with the Secretary of State.

Sponsored By:

Legislator Peter J. Savage III

Legislator Betty Jean Grant

Legislator Thomas A. Loughran

(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. 1 of 2015 of the (County) ~~Legislature~~ of Erie was duly passed by the Erie County Legislature on February 26, 2015, and was (approved) ~~disapproved~~.
(Name of Legislative Body)
~~disapproved~~ by the Erie County Executive and was deemed duly adopted
(Elective Chief Executive Officer*)
on March 27, 2015, 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.

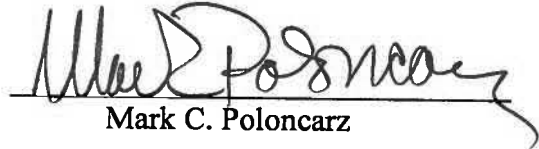
(Seal)

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

Date:

Kenneth M. McCarthy

A Public Hearing was held on the foregoing Local Law Intro. No. 9-2 2014 on March 18, 2015 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 27th day of March, 2015.


Mark C. Poloncarz

A Public Hearing was held on the foregoing Local Law Intro. No. 9-2 2014 on March 18, 2015 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 March, 2015.

Mark C. Poloncarz