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COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

July 29, 2016

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

Re: Veto of Local Law Intro. No. 9-1-2016

Dear Ms. McCarthy:

A certified copy of Local Law Intro. No. 9-1-2016, entitled "*A LOCAL LAW amending Local Law No. 1-1959, constituting the Erie County Charter, as amended, in relation to recommendations made by the Erie County Charter Revision Commission, duly organized pursuant to Local Law No. 5-2015*" was presented to me for approval on July 15, 2016. A public hearing regarding this Local Law was duly held on July 28, 2016. Pursuant to Erie County Charter Section 205, I hereby Disapprove and VETO Local Law Intro.. No. 9-1-2016.

Local Law Intro. No. 9-1-2016 purports to amend the Erie County Charter ("Charter") across dozens of articles and sections throughout the Charter. Many of these changes are minor and technical in nature and some are more fundamental and profound. I believe that many of the proposed amendments are acceptable and serve the interests of County government and the residents we serve.

However, there are a number of Charter amendments contained in Local Law Intro. No. 9-1-2016 which are objectionable for several reasons. Some amendments are not legal under New York State law, some improperly and without satisfactory merit or rationale transfer powers from one branch of County government to another (seemingly for partisan reasons), and some are objectionable on public policy or governance grounds.

In making this decision, I also took into account public comments made at the various Charter Revision Commission public hearings, the Legislature's public hearing, and comments provided at the county executive's public hearing on July 28, 2016 by the League of Women Voters Buffalo/Niagara. I took these comments seriously and thank the various individuals who took the time to attend the meetings and provide oral or written comments concerning the Charter amendments.

Local Law Intro. No. 9-1-2016 purports to amend the Charter to create a new Article concerning changes to the Code of Ethics and the composition of the Board of Ethics. While I fully support changes to the Code of Ethics and its oversight board (and have proposed and expressed support for such changes via a separate local law introduced by Legislator Thomas Loughran), the version passed by your

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Honorable Body is illegal. The law proposes an eighteen (18) member new Board of Ethics (as contrasted with the current five-member board which is confirmed by the Legislature) appointed by fifteen (15) different elected officials. This will, in my opinion, only create an unwieldy and partisan group that will be subject to political pressures from the new appointing authorities and is likely to have difficulty operating for practical reasons (inability to obtain a quorum, etc.).

Additionally, I hereby declare the provision related to the appointment of said members by different elected officials to be null and void as an illegality. New York General Municipal Law Section 808 (1) states in part:

The governing body of any county may establish a county board of ethics and appropriate moneys for maintenance and personal services in connection therewith. The members of such board of ethics shall be appointed by such governing body except in the case of a county operating under an optional or alternative form of county government or county charter, in which case the members shall be appointed by the county executive or county manager, as the case may be, subject to confirmation by such governing body.

Pursuant to this section, the County of Erie established a board of ethics. The County of Erie is operating under a charter. Thus, pursuant to the above section, only the county executive may appoint members to the Board of Ethics. It is settled law a local modification of a county charter may not override state law. State law is clear: in a county with an executive or manager, only the executive or manager may make appointments to a board of ethics. Thus, as a matter of law, the provision alleging providing other elected officials the power to appoint members of the Erie County Board of Ethics is null and void as a matter of law.

Furthermore, the law establishes new limits on political donations. While I support campaign finance reform, at the request of the Legislature's majority staff, the Erie County Department of Law's outside legal counsel analyzed the Charter amendments. Their review of this provision led them to opine that the language is illegal because it does not comport with New York State law and regulations regarding campaign finance and limits on donations by various entities. As such, the provision establishing limits on political donations is null and void as a matter of law.

Finally, the law includes language stating that "any official appointed by the County Executive or the Legislature convicted of a felony or crime of moral turpitude, related or unrelated to his or her position, is deemed to resign his or her position effective immediately upon conviction." While I do not disagree with the intention of this provision, the fact remains that the provision deliberately excludes whole categories of appointed officials in Erie County government including the Sheriff Office, District Attorney, Comptroller, County Clerk, Board of Elections, and Buffalo and Erie County Public Library. Additionally, while narrow in one way, the provisions of the law are also overbroad in that every civil service employee is technically "appointed" by the county executive, and therefore would be subject to the law. New York State Civil Service law is controlling regarding the termination of an employee's position with the County of Erie. As stated above law a local modification of a county charter may not override state law. As such, the provision such termination requirement is null and void as a matter of law.

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Local Law Intro. No. 9-1-2016 purports to amend the Charter to develop four year terms for county legislators starting in 2017. The local law refers to four year terms for county legislators in two separate articles. Article 2, Section 202.2 establishes the new four year term starting in 2017 and purports to link these new terms to the results of reapportionment from a new independent reapportionment commission process. Article 2, Section 210 creates a new "independent commission on reapportionment." The concern here is that the next reapportionment commission will not be seated until after the 2020 Federal Census is conducted and its results finalized, which is likely to be in 2021, based on the last two rounds of reapportionment in Erie County in 2001 and 2011. And yet, the new four year terms, which are supposed to be linked to the new reapportionment commission, would start four years earlier in 2017.

Local Law Intro. No. 9-1-2016 purports to amend the Charter in Article 2, Section 204 to change the form and procedure by which the Legislature adopts local laws. The County's outside legal counsel has opined that this language violates Article 3 of the New York State Municipal Home Rule Law, and that a local government "does not have authority to change the procedure for adopting a local law." Accordingly, I am objecting to this Charter amendment language.

Local Law Intro. No. 9-1-2016 purports to amend Section 601 of the Charter for the appointment and removal of the Erie County Attorney and some form of review or approval over the hiring of its staff by the Erie County Legislature. The language would permit three countywide elected officials or the County Legislature to fire/remove the Erie County Attorney (regardless of the will of the County Executive, who is the appointing authority), and would also prohibit the County Executive from removing the Attorney without the consent of other officials. In addition, the amendment is worded in a manner that could lead to the conclusion that the hiring of staff and administration of the Department of Law is subject to approval of the Legislature – a process that does not exist for any other department/unit in County government.

This amendment was not approved by the Charter Revision Commission, and was arbitrarily added by the Republican Caucus of the Legislature after the Commission transmitted its recommendations to the Legislature. Therefore, for policy and practical reasons, I object to the amendment.

For the reasons stated above, I hereby Disapprove and Veto Local Law Intro. 9-1-2016.

Sincerely yours,

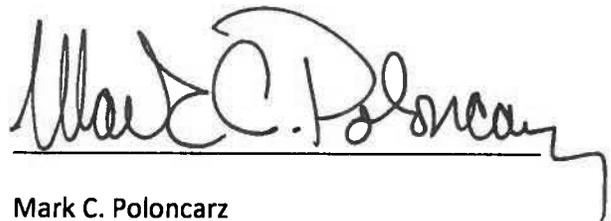


Mark C. Poloncarz, Esq.
Erie County Executive

A Public Hearing was held on the foregoing Local Law Intro. No. 9-1 2016 on July 28th, 2016 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 29th day of July, 2016.

Mark C. Poloncarz

A Public Hearing was held on the foregoing Local Law Intro. No. 9-1 2016 on July 28th, 2016 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 DISSAPPROVE and VETO said Local Law this 29th day of July, 2016.



Mark C. Poloncarz