

LOCAL LAW TO BE ENACTED BY
THE ERIE COUNTY LEGISLATURE
IN THE
COUNTY OF ERIE

LOCAL LAW INTRO No. 4-2 (2016)

LOCAL LAW No. _____ (2016)

A LOCAL LAW IN THE RELATION TO PROHIBITING THE SALE OF TOBACCO PRODUCTS AND ELECTRONIC-CIGARETTES IN LICENSED HEALTH CARE INSTITUTIONS, PHARMACIES AND RETAIL ESTABLISHMENTS CONTAINING PHARMACIES IN ERIE COUNTY

Section 1. Legislative Findings and Intent

This Legislature hereby makes the following findings and determinations:

- a) There exists conclusive evidence that tobacco products are addictive, inherently dangerous and cause cancer, cardiovascular disease, respiratory disease, diabetes, negative birth and developmental outcomes, allergies, and irritation to the eyes, nose, and throat; and whereas the majority of all smokers begin using tobacco products before age 18; an estimated three thousand (3,000) minors begin smoking every day in the United States; and the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin; and despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products remains a major problem.
- b) This Legislature also finds that more than 130,000 adolescents and 2,500,000 adults in New York State currently smoke and smoking kills approximately 25,400 adults in the state each year.
- c) This Legislature also finds that tobacco use is the foremost preventable cause of premature death in the United States, causing over 400,000 deaths in the United States each year.
- d) This Legislature also finds that each year about 13,000 New Yorkers are diagnosed with lung cancer and about 9,400 men and women in New York State die each year of this disease. Smoking is the most common cause of lung cancer and "second-hand smoke" increases the risk for lung cancer.
- e) This Legislature further finds that the sale of tobacco products is inconsistent with the mission of Licensed Health Care Institutions and pharmacies because it is detrimental to public health and mitigates efforts to educate patients on the safe and effective use of medication.
- f) This Legislature also finds that The American Pharmacists Association and the Pharmacists Society of the State of New York have called for the adoption of state and local prohibitions of tobacco sales in pharmacies.

- g) Erie County has a substantial interest in reducing the number of individuals of all ages who use cigarettes and other tobacco products, and in reducing tobacco dependence and the illnesses and premature death associated with tobacco use.

Section 2. Definitions.

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

- a) "Tobacco Products" means any product made or derived from tobacco or which contains synthetic nicotine marketed or sold for human consumption, whether consumption occurs through inhalation, or oral or dermal absorption. Tobacco product does not include drugs, devices, or combination products authorized for sale by the state or U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.
- b) "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.
- c) "Licensed Health Care Institution" shall mean any facility or institution engaged principally in providing services by or under the supervision of a physician or, in the case of a dental clinic or dental dispensary, of a dentist, for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, public health center, diagnostic center, treatment center, dental clinic, dental dispensary; or nursing home, residential health care facility, out-patient lodge, general hospital or any entity subject to licensing by the New York State Department of Health pursuant to New York Public Health Article 28.
- d) "Pharmacy" means a pharmacy registered pursuant to Section 6808 of New York Education Law.
- 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 sale of tobacco products.

No Licensed Health Care Institution, Pharmacy or Retail Establishment that contains a pharmacy within it, located in Erie County shall sell or cause to be sold tobacco products or electronic cigarettes.

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. 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 6. Effective Date.

This local law shall take effect ninety (90) days from the date of passage.

SPONSOR: Legislator Peter J. Savage, III

**CO-SPONSORS: Legislator Thomas A. Loughran
 Legislator Patrick B. Burke**