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COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

September 15, 2017

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

RE: Veto of Local Law Intro. No. 13-1-2017

Dear Ms. McCarthy:

A certified copy of Local Law Intro. No. 13-1-2017, entitled "*A LL Amending Local Law No. 1 of 1959, as Amended, Otherwise known as the Erie County Charter, Requiring All County Contracts Over \$10,000 be Awarded to American Based Companies Using American Manufactured Materials, Also Known as the Made in America Act*" ("Intro 13-1" or the "Law"), was presented to me for approval on August 18, 2017. A public hearing regarding this Local Law was duly held on September 7, 2017. Pursuant to Erie County ("the "County") Charter Section 205, I hereby Disapprove and VETO Local Law Intro. No. 13-1-2017.

Although Intro 13-1 seems intended to increase the County's support of American-made products and goods, an intention I am sure we all support in principle, given the Law's ambiguous language and minimal detail I cannot support this legislation in its current form. Unlike most other proposed laws presented for my consideration, Intro 13-1 is absent of proper definitions and is not clear on what types of products/materials it affects, leaving the Law open to misinterpretation and an inability to achieve its intended goal. For example, the local law also does not clarify who would be considered as the county's "affiliates" which may or may not include the sewer districts, Erie County Industrial Development Agency, Erie County Fiscal Stability Authority, our library system, or SUNY Erie to name a few. Each of these institutions is governed by its own boards, none of which I believe were consulted when this Law was being drafted, though pursuant accounting principles may be considered component agencies of the County.

The Law also does not describe what is meant by a product being produced in "substantial part" in the United States, among other ambiguous phrases. Additionally, given the Law's current form it is my position that this Law could have the unintended consequence of slowing down the purchasing process, which would then lead to longer times to complete infrastructure projects.

I am sure the Law was considered and drafted with good intentions, but given that no input was sought from the Division of Purchase, the Erie County Attorney's Office or the actual

Poloncarz Veto Message to Legislature on Intro 13-1 (2017)

September 15, 2017

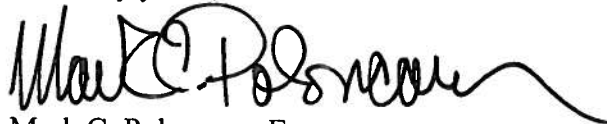
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Departments that would have to enact this new policy I cannot move forward with this law until the ambiguity within it is removed, more questions are answered and more clarity is given. Since the first discussion of this law at the Legislature I have had numerous conversations with long-time county employees who have provided other examples of the difficulties this local law present if passed. Perhaps if the Law's author (s) had taken the time to meet and deliberate with the actual people that would be affected by its passage before submitting it to the whole body, a more detailed and thoughtful piece of legislation would have resulted.

On an additional point, given the opinion rendered by the office of the County Attorney on whether Erie County is preempted from enacting such law by New York State law, I have requested the County Attorney seek a formal, independent opinion from the NYS Attorney General's office on whether the County has the power to enact such a law or is precluded by state law. The Attorney General's office should be able to opine whether or not Ere County (a subdivision of the state) can amend its procurement policy, potentially not aligning itself with the procurement policies of the state. If the Attorney General's opinion is that the County can move forward in this direction I stand ready to move on an amended law that would remove the ambiguity presently contained, satisfy everyone involved and achieve the spirit of this law.

Although I cannot support this Law in its current form I stand at the ready to work with the Legislature to draft and support a law that accomplishes the intentions of this piece of legislation. I wholeheartedly believe that the County has a role to play in encouraging the purchase of American-made products and materials but cannot endorse this law as presently drafted simply so that I can say we have passed a law. I instead want to work with the Legislature, my Department heads and other stakeholders to draft legislation that will accomplish what we seek, withstand legal scrutiny and stand the test of time beyond our tenure in government.

Sincerely yours,



Mark C. Poloncarz, Esq.
Erie County Executive

MCP/jr
Encl.

cc: Michael Siragusa, Esq., Erie County Attorney
Vallie Ferraraccio, Director of Purchasing