

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

LOCAL LAW INTRO. – NO. 2-2 - 2018

LOCAL LAW NO. _____ - 2018

A Law amending Local Law 2 (2014) to include the known abuse of drugs on property as a violation of the Social Host Law.

SECTION 1. LEGISLATIVE INTENT

- A. The Legislature of the County of Erie finds that underage drinking and drug abuse 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 or drugs by a minor in his or her home or other privately owned property. The underage consumption of alcohol and/or drugs, 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. [Further, within the last few years, the number of young people addicted to opioids throughout the United States, and especially in Erie County, has exponentially increased. As a result, opioid related deaths have become all too common occurrences, devastating countless addicted individuals, families, and communities.] In addition, the prevalence of young people addicted to opioids throughout the United States, and especially in Erie County, is unacceptable at any level. Opioid related deaths devastate addicted individuals, families, and communities.

This local law will serve to deter the consumption of alcoholic beverages and drugs 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.
- 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 alcohol 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, and/or drugs, 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. "Drugs" shall mean any substance listed in schedule I, II, III, and IV of New York State Public Health Law §3306, [including but not limited to marijuana, heroin, hydrocodone, oxycodone, fentanyl, anabolic steroids, and cocaine] as may be amended from time to time by the NYS Legislature.
- F. "Knowingly" shall mean to be aware of, or having reason to be aware of, the consumption of drugs or alcohol by a minor.
- G. "Minor" shall mean any person under the age of twenty-one.
- H. "Practitioner" shall mean a physician, dentist, podiatrist, or other person licensed or otherwise permitted to dispense or administer a controlled substance in the course of a licensed professional practice pursuant to Article 33 of the New York State Public Health Law. Such person shall be deemed a practitioner only as to such substances, or conduct relating to such substances, as is permitted by his license, permit or otherwise permitted by law.

- I. "Reasonable corrective action" shall include, but not be limited to:
- a. making a prompt demand that such minor refrain from further consumption of the alcoholic beverages and/or drugs; or
 - b. if such minor does not comply with such request, either promptly reporting such underage consumption of alcohol and/or drugs:
 1. to the local law enforcement agency; or
 2. to the minor's parent or guardian.
- J. "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 OR DRUGS 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, and/or drugs 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, and/or drugs 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; or
 - d. the consumption of drugs by a minor that have been prescribed by a practitioner pursuant to the New York State Public Health Law and all other applicable rules and regulations, and is consumed as directed by the prescription.

SECTION 5. PENALTIES AND ENFORCEMENT

- A. 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.
- B. [Further, in accordance with NY General Obligation Law §§3-113(1) this law shall hold the parents or guardian liable for up to \$5,000 worth of damage for the acts of a minor under said guardian's supervision.] Further, in accordance with NY General Obligation Law §§3-112(1) this law shall hold the parents or guardian liable for up to \$5,000 worth of damage for the acts of their children over whom they have legal guardianship.

SECTION 6. EFFECT ON OTHER LAWS

The provisions 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 of 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 occurring on or after the effective date of this local law.

Sponsor: Legislator Dixon

Co-Sponsor: Legislators Lorigo, Rath, Hardwick and Mills