

New York State Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001
www.dos.ny.gov

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

FILED
STATE RECORDS

DEC 31 2018

DEPARTMENT OF STATE

Local Law No. 6 of the year 20 18

A local law The Public Health Protection Act of 2018

(Insert Title)

Be it enacted by the _____ of the
(Name of Legislative Body)

☒ County ☐ City ☐ Town ☐ Village
(Select one.)
of ERIE

as follows:

Section 1: Legislative Findings and Intent

The Erie County Legislature hereby makes the following findings and determinations:

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. Scientific studies have proven that cigarette smoking causes chronic lung disease, coronary heart disease, stroke, and cancer of the lungs, larynx, esophagus, mouth, and bladder and contributes to cancer of the cervix, pancreas, and kidneys. The use of cigars is also known to cause lung, larynx, esophageal, and oral cancer. The U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin.

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

Despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products remains a major problem. The majority of all smokers begin using tobacco products before age 18 and an estimated 3,000 minors begin smoking every day in the United States.

This Legislature also finds that more than 130,000 adolescents and 2,500,000 adults in New York State currently smoke. 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.

This Legislature also finds that tobacco use is the foremost preventable cause of premature death in the United States, causing over 440,000 deaths in the United States each year.

Furthermore, the United States Environmental Protection Agency has found secondhand smoke to be a risk to public health and has classified secondhand smoke as a Group A carcinogen. Smoking is the most common cause of lung cancer and secondhand smoke increases the risk for cancer. Exposure to secondhand smoke is the third leading cause of preventable death in this country.

Erie County has a substantial public health interest in reducing the number of individuals of all ages who use tobacco products, and in reducing tobacco dependence and the illnesses and premature death associated with tobacco use and nicotine consumption.

In the past, public campaigns to ban smoking in public spaces such as restaurants, movie theaters and office buildings, as well as within public vehicles, trains, buses, airplanes and near/around public gathering spaces such as lobbies and around entrances to buildings have been enacted and subsequently widely praised for protecting the public and public health.

Smoking in Motor Vehicles

Smoking in a small enclosed space, such as a motor vehicle, produces a level of toxicity in the indoor air environment considerably greater than the level considered to be hazardous by the United States Environmental Protection Agency. In motor vehicles, the consumption of tobacco products is even more hazardous as tobacco particulates enter a vehicle's upholstery and can cycle back into the air, exposing passengers to toxins even after smoking in the vehicle has ceased.

Exposure to secondhand smoke causes numerous health problems in all persons, especially infants and children. Secondhand smoke has been linked to the onset of Sudden Infant Death Syndrome, cancer and an increased risk of contracting bronchitis and pneumonia. Children are especially vulnerable to the effects of secondhand smoke as they have smaller lungs and faster breathing rates than adults.

The Erie County Legislature further finds that to promote and maintain the health, safety and well-being of children, it is necessary to regulate and prohibit the smoking of tobacco products in motor vehicles when children are present.

Sale of Tobacco Products in Health Care Institutions and Pharmacies

The Erie County 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. This Legislature 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.

Smoking in/Adjacent to Bus Shelters

The Erie County Legislature further finds that public bus shelters and the public areas adjacent thereto are being used by smokers as shelters during inclement weather and at other times, thereby exposing bus riders to secondhand smoke which poses a public health threat and hazard which must be addressed and prohibited.

Section 2: Definitions

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

- a) "Child" shall mean any person under 18 years of age.
- b) "Smoking" within the confines of a motor vehicle, as defined under New York State's Regulation of Smoking in Public and Work Places, shall mean the burning of a lighted cigar, cigarette, electronic cigarette or electronic smoking device, pipe or any other matter or substance which contains tobacco or nicotine.
- c) "Tobacco Products" shall mean 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.
- d) "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, vapes, vaporizers, hookah pens, or under any other electronic nicotine delivery systems (ENDS).
- e) "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, outpatient 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.

- f) "Pharmacy" means a pharmacy registered pursuant to Section 6808 of New York Education Law.
- g) "Commissioner" shall mean the Erie County Commissioner of Health.
- h) "Department" shall mean the Erie County Department of Health.
- i) "Bus Shelter" shall mean any covered structure at a bus stop, placed upon a sidewalk or concrete pad in the County of Erie; providing protection against the weather for people waiting for a bus.
- j) "Public Place" shall mean any place open to the general public, including, for example, streets, sidewalks, playgrounds, or bus stops. For sidewalks and driveways, this shall include the curb or, if no curb, the edge of the pavement.

Section 3: Prohibitions

The following prohibitions shall be established under this Local Law:

Smoking in Motor Vehicles

The smoking of tobacco or an electronic cigarette in a motor vehicle in which a child is present in the vehicle is prohibited and deemed unlawful. This prohibition extends regardless of whether the vehicle is moving or parked or if the vehicle windows or doors are open.

Sale of Tobacco or E-Cigarette Products in Health Care Institutions and Pharmacies

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.

Smoking In/Adjacent to Bus Shelters

The smoking of tobacco or an electronic cigarette containing nicotine upon any public place adjoining or inside of any bus shelter is prohibited and deemed unlawful.

Bus transportation providers shall post "No Smoking" or "Smoke Free" signs or the international "No Smoking" symbol, or both, in conspicuous places on their properties sufficient to provide public notice of this prohibition.

Section 4: Enforcement and Penalties

Smoking in Motor Vehicles

Any person who knowingly violates the provisions of this Local Law, upon conviction thereof, shall be guilty of a violation punishable by a fine up to \$50 for the first offense after the end of the grace period. A second offense shall be a violation punishable by a fine up to \$100. A third offense shall be a violation punishable by a fine up to \$150.

A grace period will be in effect for the first 90 days after this Local Law is signed into law and certified by the New York State Secretary of State. During this time fines will not be rendered and violators will be given warnings.

Sale of Tobacco or E-Cigarette Products in Health Care Institutions and Pharmacies

The Commissioner of the Erie County Department of Health shall have sole jurisdiction to enforce the provisions of this provision of this Local Law. If the Commissioner determines after notice and a hearing that a violation of Section 3 regarding the Sale of Tobacco or E-Cigarette Products in Health Care Institutions and Pharmacies 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.

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. The decision of the Commissioner shall be reviewable pursuant to Article 78 of the New York Civil Practice Law and Rules. 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.

Smoking In/Adjacent to Bus Shelters

Any person who knowingly violates the provisions of this Local Law, upon conviction thereof, shall be guilty of a violation punishable by a fine up to \$50 for the first offense after the end of the grace period. A second offense shall be a violation punishable by a fine up to \$100. A third offense shall be a violation punishable by a fine up to \$150.

A grace period will be in effect for the first 90 days after this Local Law is signed into law and certified by the New York State Secretary of State. During this time fines will not be rendered and violators will be given warnings.

The presence or absence of signs shall not be a defense to a violation of this section.

Section 5: Effective Date

This Local Law shall take effect upon filing with the New York State Secretary of State.

Section 6: 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.

Sponsors:

Peter J. Savage, III

John J. Mills

Patrick B. Burke

(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. 6 of 20 18 of the (County) _____ of ERIE was duly passed by the ERIE COUNTY LEGISLATURE on DECEMBER 6 20 18, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the ERIE COUNTY EXECUTIVE and was deemed duly adopted (Elective Chief Executive Officer*) on December 28, 20 18, 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*)

* 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.

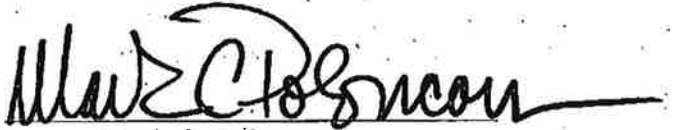
Clerk of the county legislative body, City, Town or Village Clerk or
officer designated by local legislative body

Date:

December 28, 2018

(Seal)

A Public Hearing was held on the foregoing **Local Law Intro. No. 7-1-2018** on **December 17, 2018** 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 28 day of December, 2018.


Mark C. Poloncarz

A Public Hearing was held on the foregoing **Local Law Intro. No. 7-1** on **December 17, 2018** 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 _____, 20____.

Mark C. Poloncarz