



STEFAN I. MYCHAJLIW

ERIE COUNTY COMPTROLLER

January 15, 2021

Dr. Gale Burstein
Commissioner
Erie County Department of Health
95 Franklin Street
Buffalo, NY 14202

Dear Commissioner Burstein:

I was contacted by the owner of a restaurant who was targeted by one of your Health Inspectors that levied fines against this establishment. In a letter dated January 5, 2021, the owner was informed of two violations, one going back to the fall. If you haven't heard, restaurants are struggling to stay in business. They must contend with constantly changing regulations and closures. As reported by your inspector, the issue was addressed at the time of the visit. It appears no inspections have occurred since at this location. The last thing you should be doing is punitively punishing struggling small businesses that can barely stay open due to COVID restrictions and closures that most politicians do not follow themselves.

Your decision to inflict financial harm on business owners who cannot pay their bills, cannot provide for their families, and lay off staff is unfortunate. Even restaurants that received tens of thousands of dollars in business grants from Erie County via 43 North closed their doors shortly after cashing their taxpayer funded check. To those county employees earning six figures in overtime and holiday pay on top of a steady paycheck throughout the pandemic, a \$300, \$1,000, or even \$15,000 fine may not seem concerning. But to local business owners they can be devastating.

As such, because the Administration's approach has been to cause further harm for businesses, the Comptroller's Office revised Erie County's accounting policy, allowed and authorized by Charter, to collect all fines levied by your department. A copy of this change in accounting policy was provided to your office on December 1, 2020.

I have attached another copy. The policy, which was effective immediately as of December 1, 2020, was established for all fines imposed by the ECDOH for alleged infractions related to Non-Compliance of COVID-19 Executive Orders, including but not limited to NYS Executive Order 202.16, Executive Order 202.41; and NY Forward Guidelines.

Based on the letter sent to the business owner, your department is in direct violation of this policy. Because of this, the Office of Erie County Comptroller is now forced to take more drastic accounting measures that we have already put in place to enforce this policy.

To remind you, the Office of Erie County Comptroller has already implemented the following accounting procedures and controls to stop you from collecting COVID fines. They include, but are not limited to:

- Physically retrieving all deposit slips from the Erie County Health Department
- Setting up a separate bank account only for the ECDOH to strengthen controls on deposits and block deposits of COVID fines
- Suspended ability for the Health Department to deposit checks through Remote Deposit Capture (RDC)
- Policy requires all payments for COVID-19 fines to not to be deposited by the Health Department. Checks/cash must be sent to the Comptroller's Office for handling.
- Electronically block the ability for the Health Department to make electronic direct deposits
- Regular monitoring of Health Department accounting activity
- Additional controls put in place in coordination with banking partner

If for whatever reason it is determined your office made any type of attempt to deposit a COVID fine, the Office of Erie County Comptroller will fully refund the fine so that our accounting policy is fully followed by your office.

Any letters sent to business owners concerning fines for a COVID-19 violation should in no way direct the alleged offender to mail any payment to any of your offices or satellite locations. When your department levies a fine against a struggling business owner, you are required to follow the Comptroller's Office policy: Accounts Receivables should be recorded for all receivables owed to the ECDOH which have been billed or invoiced by the ECDOH relating to COVID-19 fines for non-compliance of COVID-19 Executive Orders and NY Forward Guidelines.

Furthermore, per policy, your department is required to instruct the alleged violator to mail checks directly to the Comptroller's Office. However, in the letter received by the business owner who contacted my office, your sanitarian tells the owner to send penalty to a 503 Kensington Avenue location. This is in direct violation of the policy you are ordered to follow. The policy clearly states that the Comptroller's Office will assume collection efforts.

Your department, which is consistently reprimanding and punishing businesses and individuals, should understand the importance of following policy.

Any correspondence from your office concerning a COVID-19 fine must instruct the alleged violator to mail checks directly to the Comptroller's Office: 95 Franklin Avenue, 11th Floor, Buffalo, New York, 14202. This will allow our office to work with, and not hinder, struggling businesses who have been targeted under executive orders and constantly changing regulations. While litigation should not have to be pursued by your refusal to follow simple county policies and procedures, I will explore all avenues to get you to comply with the rules, same way your inspectors claim businesses need to comply with COVID restrictions and closures. In the meantime, we have already contacted business owners like the one you just fined, and ordered them to send payment of violations to the Office of Erie County Comptroller.

Sincerely,



STEFAN I. MYCHAJLIW
Erie County Comptroller