

ERIE COUNTY LEGISLATURE  
MEETING NO. 17  
SPECIAL MEETING  
AUGUST 8, 2019

The Legislature was called to order by Chair Baskin.

All members present, except Legislator Chimera.

An Invocation was held, led by Mr. Brusio, who requested a moment of silence.

The Pledge of Allegiance was led by Mr. Lorigo.

**LOCAL LAWS**

Item 1 – MR. BRUSIO moved to take Local Law No. 8 (Print #1) 2019 from the table. MR. MEYERS seconded. MR. LORIGO voted in the negative.

CARRIED. (9-1)

COUNTY OF ERIE

LOCAL LAW INTRO. NO. \_\_\_\_\_ - 2019

LOCAL LAW NO. \_\_\_\_\_ - 2019

**The Erie County Consumer Protection Act of 2019**

A LOCAL LAW amending the Erie County Charter and Erie County Administrative Code, creating a Division of Consumer Protection within the Department of Public Advocacy and transferring the Erie County Bureau of Weights and Measures from the Department of Public Works to the newly created Division of Consumer Protection.

BE IT ENACTED BY THE COUNTY OF ERIE AS FOLLOWS:

Section 1. Legislative Intent

There are two intentions behind this local law.

The first, is to create a Division of Consumer Protection in the Department of Public Advocacy, headed by a Director of Consumer Protection, charged with the education, representation, and protection of consumers within the County of Erie.

The second, is to transfer the Erie County Division of Weights and Measures from the Department of Public Works and to place it as a bureau within the newly created Division of Consumer

Protection in the Department of Public Advocacy in order to consolidate consumer protection services within one Department, thereby improving service, focus, and efficiency.

Section 2. Amending Existing Articles in the Erie County Charter

Erie County Local Law number one of nineteen hundred fifty-nine, as amended, constituting the Erie County Charter, is hereby amended to read as follows:

- a) Article 11, Section 1103 of the Erie County Charter is hereby amended to read as follows:

Section 1103. Divisions of the department. There shall be within the Department of Public Works the following divisions: Highways; Building and Grounds; and Fleet Services, ~~and Weights and Measures.~~

- b) Article 17 of the Erie County Charter is hereby amended to add new Section 1708 as follows:

Section 1701. Department ~~Office~~ of Public Advocacy.

1702. Division of Equal Employment Opportunity, Diversity and Inclusion.

1703. Advisory board to Division of Equal Employment Opportunity, Diversity and Inclusion.

1704. Division on the Status of Women.

1705. Advisory Commission to the Division on the Status of Women.

1706. Division for Persons with Disabilities.

1707. Advisory Board to Division for Persons with Disabilities.

1708. Division of Consumer Protection.

Section 1701. Department of Public Advocacy. There shall be a Department of Public Advocacy, the head of which shall be the Commissioner. The Commissioner of said Department shall be appointed from among the division directors by, and shall serve at the pleasure of, the County Executive, subject to approval of the County Legislature. The Commissioner of the Department shall:

1. Serve in the capacity of countywide public advocate for all residents of Erie County, overseeing the day-to-day operations of the Division of Equal Employment Opportunity, Division on the Status of Women, Division for the Disabled and ~~Consumer Protection Committee~~ the Division of Consumer Protection.
2. Report to the County Executive and the Legislature on an annual basis on all activities related to fulfilling the obligations of the Department of Public Advocacy.

Section 1708. There shall be a Division of Consumer Protection, the head of which shall be the Director.

1. Within the Division of Consumer Protection there shall be a Bureau of Weights and Measures. The Bureau shall be headed by the county sealer of weights and measures who shall have all the powers and duties of a county sealer of weights and measures as provided for by New York State Law and the Erie County Administrative Code.

Section 3. Amending Existing Articles in the Erie County Administrative Code

Erie County Local Law No. 1-1960, as amended, constituting the Erie County Administrative Code, is hereby amended to read as follows:

- a) Article 10 Section 10.05 of the Erie County Administrative Code is hereby deleted in its entirety including reference to such section in the Article 10 heading.
- b) Article 10 Section 10.06 of the Erie County Administrative Code is hereby renumbered to read Section 10.05 including reference to such section in the Article 10 heading.
- c) Article 17 of the Erie County Administrative Code is hereby amended to add new Section 11-F-04 as follows:

Section 11-F-04 Bureau of Weights and Measures.

- a. The bureau of weights and measures shall be headed by the county sealer of weights and measures. He or she shall possess all of the qualifications required for and shall have all the powers and duties of a county sealer of weights and measures now or hereafter granted or imposed by article sixteen of the agriculture and market law of the state of New York, by local law, by ordinance or resolution of the county legislature, by order or direction of the Commissioner of Public Advocacy, and by any applicable provision of any act of the legislature not inconsistent with the county charter.
- b. Wherever and whenever the county sealer of weights and measures is required by any state law to make a report to the county legislature, he or she shall, at the same time, file a copy thereof with the director of consumer protection.
- c. Notwithstanding the provisions of section one hundred eighty two of article sixteen of the agricultural and market law, the appointment of a county sealer of weights and measures shall be made by the Commissioner of Public Advocacy

Section 4. Effective Date

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

Section 5. Severability

If any clause, sentence, paragraph, subdivision, section or part of the Local Law or the application thereof, to any person, individual, corporation, firm, partnership, entity or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order of 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 Local Law or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

Sponsors:

Legislator April N.M. Baskin  
Legislator John Bruso  
Legislator Kevin Hardwick  
Legislator Timothy Meyers  
Legislator Howard Johnson  
Legislator Thomas Loughran

MR. BRUSO moved to approve Local Law No. 8 (Print #1) 2019. MR. MEYERS seconded.

CHAIR BASKIN directed that a roll-call vote be taken.

AYES: MR. LORIGO, MR. MILLS, MR. RATH, CHAIR BASKIN, MR. BRUSO, MR. HARDWICK, MR. JOHNSON, MR. LOUGHRAN and MR. MEYERS. NOES: MS. DIXON. (AYES: 9; NOES: 1)

CARRIED.

### **COMMITTEE REPORTS**

Item 2 – MR. BRUSO presented the following report and moved for immediate consideration and approval. MR. JOHNSON seconded.

CARRIED UNANIMOUSLY.

RESOLUTION NO. 169

August 8, 2019	HEALTH & HUMAN SERVICES COMMITTEE REPORT NO. 12
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ALL MEMBERS PRESENT.  
CHAIR BASKIN PRESENT AS EX-OFFICIO MEMBER.

1. RESOLVED, all items are hereby tabled.

**JOHN BRUSO  
CHAIR**

### **COMMUNICATIONS FROM ELECTED OFFICIALS**

#### **FROM CHAIR BASKIN**

Item 3 – (COMM. 17E-1) Letter to Clerk of Legislature Calling for Special Meeting

Received, filed and printed.

July 25, 2019

Robert M. Graber, Clerk  
Erie County Legislature  
92 Franklin Street, Fourth Floor  
Buffalo, New York 14202

Dear Mr. Graber:

Please be advised that there is a pressing matter before the Erie County Legislature that needs immediate attention. Therefore, there is a need to call a Special Meeting of the Legislature.

Accordingly, pursuant to Rule 2.02 of the Rules of Order of the Erie County Legislature, you are hereby directed to call a SPECIAL MEETING of the Erie County Legislature to be held on THURSDAY, AUGUST 8, 2019 at 10:30 AM in the Chambers of the Legislature, 4th Floor of Old County Hall, 92 Franklin St., Buffalo, New York.

The purpose of the Special Meeting will be the consideration of Local Law Intro. 8-1 (2019), the Erie County Consumer Protection Act of 2019, and the legal opinion dated July 23, 2019 from the Department of Law on Local Law Intro. 8-1 (2019), as well as the Committee Report of the Health and Human Services Committee which will meet earlier that day to discuss and act on lead poisoning and lead paint issues.

The items on the agenda of the Special Meeting will include:

- Local Law Intro. 8-1 (2019)
- A legal opinion dated July 23, 2019 from the Department of Law on Local Law Intro. 8-1 (2019)
- The Report of the Health & Human Services Committee meeting dated August 8, 2019
- My letter to you directing the calling of the Special Meeting
- Your Memo as Clerk of the Legislature to Members of the Legislature calling the Special Meeting.

Thank you for your prompt attention to this matter.

Sincerely,

April N.M. Baskin  
Chair

**COMMUNICATIONS FROM THE DEPARTMENTS**

**FROM THE DEPARTMENT OF LAW**

Item 4 – (COMM. 17M-1) Legal Opinion Dated July 23, 2019 on Local Law Intro. 8-1 (2019)

Received, filed and printed.

July 23, 2019

Via Email Only  
Hon. April N.M. Baskin, Chairwoman  
Erie County Legislature  
Old Erie County Hall  
92 Franklin Street, 4th Floor  
Buffalo, New York 14202

Re: Opinion as to Form Local Law Intro No 8-1 – 2019

Dear Chairwoman Baskin:

In accordance with the obligations of the Erie County Attorney set forth in subsection 3, Section 204 of Article 2 of the Erie County Charter, this legal opinion concerns Local Law Intro No. 8-1-2019 (8-1).

#### Preemption

Under New York state law, preemption occurs when a local law directly conflicts with a state statute, or where a state statute expressly states that local laws on a given subject matter are preempted. Preemption can also occur where the State Legislature has assumed full regulatory responsibility in a field related to the proposed local law.

Here, New York State Municipal Home Rule Law Section (NYSMHRL) 33 provides specific authority which permits counties to enact and amend county charters in order to establish and maintain a workable framework of government. Since the State Legislature has granted counties specific authority to enact local legislation on this topic, and the charter amendments contemplated by 8-1 do not fall within the limitations to such authority delineated in Section 34 of NYSMHRL, there is no preemption issue of concern.

#### Grammar

The stated purpose of 8-1 is to amend the Erie County Charter in order to create a Division of Consumer Protection within the Department of Public Advocacy which would be headed by a Director and to transfer the Erie County Division of Weights and Measures from the Department of Public Works to the newly created Division of Consumer Protection. We find the grammar and usage of 8-1 to be sufficient in order to achieve the stated purpose.

#### Ambiguities

While every hypothetical circumstance or eventuality cannot be addressed in the scope of this opinion, 8-1 does not present any facial ambiguities that would frustrate its implementation and enforcement.

Conclusion

We find that Local Law Intro. 8-1-2019 is sufficient as to form.

Very truly yours,

MICHAEL A. SIRAGUSA  
Erie County Attorney

By \_\_\_\_\_  
Gregory P. Kammer  
Assistant County Attorney  
Direct Dial: (716) 858-2248  
E-mail: gregory.kammer@erie.gov

FROM THE CLERK OF THE LEGISLATURE

Item 5 – (COMM. 17M-2) Special Meeting Notice for August 8, 2019

Received, filed and printed.

July 25, 2019

TO: ALL MEMBERS OF THE ERIE COUNTY LEGISLATURE  
FROM: ROBERT M. GRABER, CLERK  
SUBJECT: SPECIAL MEETING NOTICE FOR AUGUST 8, 2019

PLEASE TAKE NOTICE that pursuant to Rule 2.02 of the RULES OF ORDER OF THE ERIE COUNTY LEGISLATURE, and under the direction of Chair April Baskin, there will be a SPECIAL MEETING of the Erie County Legislature on THURSDAY, AUGUST 8, 2019 at 10:30 AM in the Chambers of the Legislature, 4th Floor of Old County Hall, 92 Franklin St., Buffalo, New York.

The purpose of the Special Meeting will be the consideration of Local Law Intro. 8-1 (2019), the Erie County Consumer Protection Act of 2019, and the legal opinion dated July 23, 2019 from the Department of Law on Local Law Intro. 8-1 (2019), as well as the Committee Report of the Health and Human Services Committee which will meet earlier that day to discuss and act on lead poisoning and lead paint issues.

The items on the agenda of the Special Meeting will include:

- Local Law Intro. 8-1 (2019)
- A legal opinion dated July 23, 2019 from the Department of Law on Local Law Intro. 8-1 (2019)
- The Report of the Health & Human Services Committee meeting dated August 8, 2019

- The Chair’s letter directing the calling of the Special Meeting
- My Memo as Clerk of the Legislature to Members of the Legislature calling the Special Meeting.

The items are attached.

Thank you.

### **ANNOUNCEMENTS**

Item 6 – Chair Baskin announced that the next Session of the Legislature will be held on Thursday, September 12, 2019 at 2:00 p.m.

### **MEMORIAL RESOLUTIONS**

Item 7 – Legislator Hardwick requested that when the Legislature adjourns, it do so in memory of Jennifer L. Rymarczyk and Allan Gardner.

Item 8 – Chair Baskin requested that when the Legislature adjourns, it do so in memory of Jennifer L. Rymarczyk.

Item 9 – Legislator Johnson requested that when the Legislature adjourns, it do so in memory of the victims of the mass shootings in El Paso, Texas and Dayton, Ohio.

Item 10 – Legislator Rath requested that when the Legislature adjourns, it do so in memory of Peter J. Wolfe.

Item 11 – Legislator Lorigo requested that when the Legislature adjourns, it do so in memory of Linda M. Weimer.

Item 12 – Legislator Dixon requested that when the Legislature adjourns, it do so in memory of Joshua Mack, Joseph Giandoni and Pamela Reese.

### **ADJOURNMENT**

Item 13 - At this time, there being no further business to transact, CHAIR BASKIN announced that the Chair would entertain a Motion to Adjourn.

MR. LORIGO moved that the Legislature adjourn until Thursday, September 12, 2019 at 2:00 p.m. Eastern Standard Time. MR. MEYERS seconded.

CARRIED UNANIMOUSLY.



CHAIR BASKIN declared the Legislature adjourned until Thursday, September 12, 2019 at 2:00 p.m. Eastern Standard Time.

**ROBERT M. GRABER  
CLERK OF THE LEGISLATURE**