



**A RESOLUTION SUBMITTED BY:  
Earl "Skip" Gingerich, Supervisor of the Town of Marilla**

EC LEG JAN 3 '22 PM 2:34

**WHEREAS**, The Town of Marilla has been dealing with the Covid-19 pandemic and its disastrous effects on our residents, their families and small businesses for nearly two years; and

**WHEREAS**, The Town of Marilla has taken a sensible approach to managing the pandemic that respects those we are elected to serve and their rights afforded to them under the Constitution of the United States of America; and

**WHEREAS**, at no time has the Town of Marilla taken any adverse action against our residents or small businesses throughout the course of this pandemic, but rather we have chosen to work with them to get through this together; and

**WHEREAS**, the same cannot be said for Erie County Government, who have continued to address the pandemic with a heavy-handed approach of lockdowns, restrictions, rules, regulations, and fines that two years later have not shown to be working in the favor of the residents they are paid to serve; and

**WHEREAS**, despite being unable to get the virus under control through bureaucratic expansion, many county officials have taken advantage of the pandemic to profit heavily off of taxpayer funded overtime, an unfortunate outcome that now provides county bureaucrats with a financial incentive to keep on the same path we've been on despite its obvious failure; and

**WHEREAS**, many public employees are owed overtime as part of their bargained union contracts and they have worked mightily throughout this pandemic and they are owed fair compensation and our gratitude; and

**WHEREAS**, however, certain appointed and elected positions in government are not allowed to collect overtime because their functions are to be focused on public service, in good times and in bad; and

**WHEREAS**, recent reports from the Erie County Comptroller's Office have shown that Erie County Health Commissioner Dr. Gale Burstein has illegally collected over \$336,000 in overtime from taxpayers for her work in managing this public health crisis; and

**WHEREAS**, various laws and regulations acknowledge that an appointed Commissioner of Health cannot accept overtime, even in the event of an emergency, because it is their very job as a public servant to work and respond to an emergency and it is not additional work or duties; and,

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Town of Marilla Board goes on record establishing that our elected and appointed officials work to serve residents in good times and in bad and find the practice of utilizing a public health emergency to change overtime collections rules so certain individuals can profit from public service to be abhorrent; and be it further

**RESOLVED**, that the Town of Marilla Board acknowledges that New York State Law, Public Health Law, Article 3, Local Health Organizations, Title 3 County and Part-County Health Districts, Section 351-6 clearly states that the Commissioner of Health's compensation shall be fixed by the local Board of Supervisors or County Legislature; and, be it further

**RESOLVED**, that Erie County Commissioners are Management Employees who are not members of a union but adhere to the contract of the CSEA Local 815 bargaining unit, whose contract clearly prohibits, in Section 16.12-1, those possessing a medical degree from earning overtime; and, be it further

**RESOLVED**, that in 2009, then Erie County Comptroller Mark C. Poloncarz conducted a payroll audit and announced publicly a finding that during the county's October 2006 Storm the County improperly paid overtime to certain appointed officials because an emergency was declared. Then Comptroller Poloncarz clearly laid out the position for why certain titles, including the Commissioner of Health, Commissioner of Public Works, Commissioner of Emergency Services, amongst others, are ineligible for the collection of overtime even during a declared emergency; and be it further

**RESOLVED**, that for these reasons the Town of Marilla hereby goes on record demanding that county public officials who have abused their office to illegally publicly profit return their overtime payments to the taxpayer's immediately; and be it further

**RESOLVED**, that the Town of Marilla hereby requests that the Erie County Comptroller immediately conduct an audit of overtime earned throughout the pandemic and release a publicly establish a list of titles that illegally earned compensation and then establish a repayment plan to make taxpayers whole; and be it further

**RESOLVED**, that certified copies of this resolution be sent by the Town Clerk to County Executive Mark Poloncarz, County Comptroller Stefan Mychajliw, County Comptroller-Elect Kevin Hardwick, District Attorney John Flynn, New York State Comptroller Thomas DiNapoli, and members of the Erie County Legislature.

**FISCAL IMPACT:** *Positive for Taxpayers. Correcting this egregious misuse of authority to allow certain public officials to profit off of public service will return millions of dollars back to the taxpayers.*

#### CLERK CERTIFICATION

State of New York  
County of Erie

I, the undersigned Town Clerk of the Town of Marilla, DO HEREBY CERTIFY as follows:

1. Regular meeting of the Town Board of the Town of Marilla, Erie County, State of New York, were held on December 30, 2021 Minutes of said meeting have been duly recorded in the Minute Book kept by me in accordance with law for the purpose of recording the minutes of meetings of said Board.
2. I have compared the attached Extracts of this Resolution from the December 30, 2021 with said Minutes so recorded and said Extracts are a true copy of said Minutes and of the whole thereof insofar as said minutes relate to matters referred to in said Extracts.
3. Said Minutes correctly state the time when said Meeting was convened and the place where such Meeting was held and the members of said Board who attended said meeting.
4. Public Notice of the time and place of said Meeting and Public Hearing was duly posted and duly given to the public and the news media in accordance with the Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, and that all members of said Board had due notice of said Meeting and that the Meeting was in all respects duly held and a quorum was present and acted throughout.

In witness whereof, I have hereunto set my hand and have hereunto affixed the corporate seal of the Town of Marilla this 31<sup>st</sup> day of December 2021.

*Dawn Pearce*, Marilla Town Clerk

