

1977

A LOCAL LAW amending Local Law No. 1-1960 constituting the Erie County Administrative Code, as amended, in relation to establishing a Department of Environment and Planning by repealing Article 9 thereof and substituting a new Article 9 therefor and by amending Section 3.08A thereof.

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE, AS FOLLOWS:

Section 1. Article 9 of Local Law No. 1-1960 constituting the Erie County Administrative Code, as amended, is hereby repealed and a new Article 9 is substituted therefor to read as follows:

ARTICLE 9

DEPARTMENT OF ENVIRONMENT AND PLANNING

Section 9.01 - Organization.

9.02 - Powers and duties of Commissioner of Environment and Planning.

9.03 - Division of Planning; Deputy Commissioner; Functions.

9.04 - Division of Sewerage Management; Deputy Commissioner; Functions.

9.05 - Division of Environmental Controls; Deputy Commissioner; Functions.

9.06 - County Environmental Quality Code.

§ 9.01 - Organization. The department of environment and planning shall be headed by a commissioner, who shall organize it under the supervision and direction of the county executive into:

1. a division of planning;
2. a division of sewerage management; and
3. a division of environmental control.

§ 9.02 - Powers and duties of the Commissioner of environment and planning.

a. The commissioner of environment and planning shall have all the functions, powers, and duties provided by the county charter, by this code, and by any applicable provisions of any act of the state legislature not inconsistent with the county charter or this code.

b. The commissioner of environment and planning shall appoint a deputy commissioner for planning, a deputy commissioner for sewerage management and a deputy commissioner for environmental control.

c. The commissioner of environment and planning may from time to time delegate such of his powers, duties and functions as he shall deem appropriate to one or more of his deputies and may revoke such delegations. Any act performed by a deputy pursuant to such delegation shall have the same effect in law as if performed by the commissioner of environment and planning.

d. The commissioner of environment and planning or any authorized employee of the department may inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or for the purposes of ascertaining compliance or noncompliance with any rule or

regulation or order promulgated pursuant to this article; provided, however, except in case of emergency, such entry shall be at reasonable times and with due prior notice to the owner or occupant of said property.

e. The commissioner of environment and planning may with the concurrence of the commissioner of health authorize and direct employees of the department of health to make inspections for the department of environment and planning.

f. The commissioner of environment and planning or any consultant or employee of the department when authorized by him may enter upon any property or premises within the county for the purpose of making any surveys, examinations, tests or investigations necessary to lay out the route of or locate facilities for any sewerage system or other project assigned to the department by the county legislature at reasonable times and with due prior notice to the owner or occupant of said property.

g. The commissioner of environment and planning may execute licensing agreements with railroads, utility companies, governmental agencies and other organizations which are necessary for the construction and operation of Erie County sewerage or drainage systems.

h. The commissioner of environment and planning may, within the appropriations provided therefor, authorize and approve change orders on sewerage projects.

i. The commissioner of environment and planning may, under the direction of the county executive and upon request

of one or more municipalities within the county, assist such local governments by furnishing technical advice, information and recommendations concerning environmental and planning matters.

§ 9.03 - Division of planning; deputy commissioner; functions. The division of planning shall be headed by a deputy commissioner, who shall be a person qualified by professional education, training and at least six years experience in the field of regional, county or municipal planning and planning administration.

The deputy commissioner of planning, in addition to other duties assigned by the commissioner:

- a. shall supervise and direct the planning staff;
- b. shall advise the county executive, County legislature, development coordination board, and other departments, officials and agencies of the county with respect to any matter relating to the development or redevelopment of the county on which his opinion is requested, or upon which he deems it advisable to report;
- c. shall prepare and maintain a county comprehensive plan and annual planning program;
- d. shall participate in the development of a capital improvements program and prepare an annual capital program report.
- e. shall perform development and zoning reviews and approvals as provided for in article 12-B of the general municipal law, with the exception of the review of subdivisions.

pursuant to section 239-n of said general municipal law; and perform such other development reviews as may be required by or may pertain to federal, state, and regional governmental agencies and actions;

f. may make available, to assist in cooperative planning purposes, the services of the technical staff to the local planning commissions and boards of the cities, towns and villages within the county;

g. shall review, coordinate and integrate the planning and development programs of agencies of the county, all cities, towns and villages within the county, and all other governmental agencies operating within and affecting the county;

h. shall maintain basic data on the county's population, land use, housing, environmental status, human and natural resources and such other matters, and make such studies, analyses, plans and recommendations as may be necessary in the exercise of the powers and the performance of the duties set forth in this article;

i. shall prepare and administer any annual housing and ~~community~~ development program funded by the federal government.

j. shall have and exercise all the powers and duties of a county planning board heretofore or hereafter lawfully granted.

§ 9.04 - Division of sewerage management; deputy commissioner; functions. The division of sewerage management shall be headed by a deputy commissioner, who shall be a profes-

sional engineer licensed to practice in the state of New York and shall be a graduate of a recognized college or university with a degree in sanitary, chemical or civil engineering and six years of satisfactory experience in the design, construction and operation of sewerage systems.

The deputy commissioner, in addition to other duties assigned by the commissioner, shall:

- a. supervise and direct the sewerage management staff;
- b. furnish technical advice, information and recommendations to assist in the administration of each County sewer district;
- c. assemble data relating to the sewage collection, conveyance, treatment and disposal problems of the county and of its political subdivisions and the elimination or alleviation of such problems;
- d. have all the powers and duties of the Erie county sewer, drainage and refuse agencies. In the event the deputy commissioner is unavailable to perform these duties, the commissioner shall designate a member of the division to act for him.
- e. analyze and evaluate information for the establishment, development, coordination and utilization of sewerage facilities to service other municipalities in the county;
- f. prepare maps, plans and cost estimates on sewerage facilities, compile economic data in support thereof

and coordinate survey results in connection with a master sewerage plan;

g. prepare reports on studies and work with local municipalities in the formation of county sewer districts and in connection therewith cooperate with local, state and federal agencies on program hearings and surveys;

h. prepare or supervise the preparation of plans and specifications for construction work undertaken for any county sewer district and supervise and inspect the work;

i. supervise and direct the operation and maintenance of county sewerage facilities.

§ 9.05 - Division of environmental control; deputy commissioner; functions. The division of environmental control shall be headed by a deputy commissioner, who shall be a professional engineer licensed to practice in the state of New York and shall meet the standards established by the New York state department of environmental conservation or the New York state department of health for a principal engineer.

The deputy commissioner, in addition to other duties assigned by the commissioner:

a. shall supervise and direct the environmental control staff;

b. shall investigate and take appropriate action to resolve environmental complaints;

c. shall assist other units of county government to achieve and maintain local, state and federal environmental standards;

d. shall systematically evaluate the quality of water and air resources of the county and conduct such other investigations and undertake such other actions as may be deemed necessary or advisable to carry out the intents and purposes of the county environmental quality code and assess progress in meeting environmental goals;

e. shall conduct investigations and undertake such other actions as are necessary to carry out the intents and purposes of federal or state environmental law in connection with inter-governmental agreements for joint environmental programs;

f. shall advise the commissioner in regard to proposed orders and other enforcement measures;

g. may issue, deny, revoke or modify permits under such conditions as may be prescribed in the county environmental quality code or under state law for the prevention, abatement or control of pollution;

h. shall review proposed environmental statutes, codes, rules and regulations and other actions of other levels of government and advise the county executive and legislature as to their effect on Erie county.

§ 9.06 - County environmental quality code.

a. Adoption procedure.

Before adoption of the county environmental quality code or any amendment thereto, the commissioner of environment and planning shall cause notice of a public

hearing thereon to be published in the official newspapers and in newspapers of general daily circulation in the county once a week for two publications and at least twenty days shall elapse from the first publication to the date of the hearing. The notice shall contain an abstract statement of the proposed provision and give the time and place of such hearing. On or before the date of the first publication of the proposed provision, copies thereof shall be filed with the clerk of the county legislature, the county executive, the clerk of each city, town and village in Erie county and in the office of the commissioner of environment and planning and be open to inspection by the public. If subsequent to this initial public hearing, the commissioner's preliminary decision is to adopt the proposed county environmental quality code or any amendment thereto, he shall, within five days of said preliminary decision, submit a copy thereof to the clerk of the county legislature. The county legislature, at the second regular legislative meeting following such submission at which a quorum is present, may by resolution make a finding that the proposed code or amendment warrants further consideration. Upon such a finding, the commissioner shall hold a second public hearing in the same manner as that required for the initial public hearing. Subsequent to this second public hearing, the commissioner shall either adopt or issue an order declining to adopt the proposed code or amendment. In the event the county legislature shall make no finding that further consideration is warranted, the commissioner's preliminary decision to adopt the

proposed code or amendment shall become final upon adjournment of the second regular legislative meeting, subsequent to submission of the preliminary decision, at which a quorum is present. All rules, regulations, orders and directions promulgated under this section shall be compiled and known as the Erie county environmental quality code. In the event that provisions of the sanitary code promulgated by the board of health and provisions of the environmental quality code shall be applicable to the same subject, the more restrictive provision shall control.

b. Enforcement.

1. The commissioner may prescribe and impose penalties for the violation of or failure to comply with any of his orders or regulations, after holding a hearing thereon. Such penalties shall not exceed ten thousand dollars for a single violation or failure, which if not paid as ordered by the commissioner, will be recoverable by action in the appropriate court.

2. (a) The provisions of the county environmental quality code shall have the force and effect of law.

(b) Any non-compliance or non-conformance with any provision of such code or of a rule or regulation, duly made thereunder shall constitute a violation punishable by a fine of not more than two hundred fifty dollars or by imprisonment for not more than fifteen days or both such fine and imprisonment.

(c) Certified copies of the environmental quality code shall be received in evidence in all courts and proceedings.

3. The commissioner may enforce the county environmental quality code by stipulation, agreed settlement, consent order or other conciliation agreements.

4. The commissioner shall have all the authority conferred by state law upon local officials to enforce orders, rules and regulations pertaining to the control and enhancement of the quality, use, or enjoyment of air and water resources.

c. Procedure.

1. Notices; service of process.

(a) Notices of all public hearings shall specify the time, date and place of hearing.

(b) Service of all processes, except subpoenas, shall be made in the same manner as a summons in a civil action or by registered or certified mail with a return receipt requested, addressed to the individual served in person or in a representative capacity as hereinafter provided at his last known residence, office or place of business. Such service shall be made upon a municipality by serving the chief executive or counsel thereof, upon a sewer district, authority, commission or private corporation by serving an officer thereof or upon an unincorporated association or partnership or other company of persons which has a president or treasurer by serving either of such officers.

(c) Subpoenas shall be served upon the witnesses personally, together with such fees therefor as may be provided by law.

2. Proceedings before the commissioner.

(a) Whenever it shall appear to the commissioner that there has been a violation of any of the provisions of the county environmental code, he shall give written notice to the alleged violator or violators setting forth any thing or act done or omitted to be done or claimed to be in violation of any such provisions, and requiring that the matters complained of be corrected, or that the alleged violator appear in person or by attorney before the commissioner or his duly designated representative, at the time and place said notice specifies, and answer the charges complained of.

(b) At least twenty days notice of such hearing shall be given.

(c) One day before the return day of such notice, the person so notified shall file with the commissioner a statement setting forth the position of the person so notified, the answer, if any, to the charges made against him, the methods, practices and procedures, if any, which are being taken to prevent violations of the provisions of the county environmental quality code, and any other defenses or information pertinent to the case. Pertinent and relevant testimony of witnesses shall be received in support of or opposition to said statement.

(d) The burden of proof with respect to violations imposed by provisions of the county environmental quality code shall be upon the department.

(e) After due consideration of the written and oral statements, and testimony and arguments filed pursuant to subdivision 2.(c) above or on default in appearance on said return day, the commissioner may issue and enter such final order or make such final determination as he deems appropriate under the circumstances, and shall notify such person or persons thereof in writing, personally, by registered mail or by certified mail, return receipt requested.

3. Hearings.

(a) Public hearings shall be conducted by the commissioner, or his duly designated representative or representatives, prior to issuance of an order directing discontinuance of actions allegedly in contravention of provisions of the county environmental quality code.

(b) The hearings herein provided may be conducted by the commissioner, or by the duly designated hearing officer or officers at any time and place.

(c) A record, or summary thereof, of the proceedings of said hearings shall be made and filed with the department of environment and planning. If requested by any party concerned with said hearing, the full stenographic notes of the testimony presented at said hearing shall be taken and filed. The stenographer shall, upon the payment of his fee allowed by the law therefor, furnish a certified transcript of the whole or any part of his notes to any party to the action requiring the same.

Local Law #3
1968

(d) In any such hearing, the hearing officer or any member of the hearing panel may administer oaths, examine witnesses, and issue, in the name of the department, notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearing. A designation of a person or persons by the commissioner to perform the functions herein authorized shall be in writing and filed with the department.

4. The commissioner is hereby authorized to settle or compromise any action or cause of action for the recovery of a penalty under the provisions of the county environmental quality code.

5. Hearings for persons aggrieved.

The commissioner shall grant a hearing to any person not previously heard in connection with the making of a determination, or order, who within twenty days after service upon him of a copy of a notice, order or determination of the commissioner, may file a petition with the department alleging that the said order(s) or determination(s) is or are contrary to fact and injurious to him, and that said order or determination caused him damage by the invasion of or interference with a private right or privilege, particularly appertaining to him. At such hearing the petitioner may appear in person or by attorney, present witnesses, submit evidence and be given full opportunity to be heard. Following such hearing, the commissioner shall make his determination, which, unless an appeal is

taken therefrom, shall be final and conclusive.

6. Summary action.

Whenever the commissioner, after investigation, is of the opinion that any person is causing, engaging in or maintaining a condition or activity which in his opinion constitutes danger to the health or welfare of the people, and that it therefore appears to be prejudicial to the interest of the people to delay action for twenty days until an opportunity for a hearing can be provided in accordance with the provisions of section 9.07 C, the commissioner may order the person, by written notice, to discontinue such dangerous condition or activity or take certain action immediately or within a specified period of less than twenty days. As promptly as possible thereafter, within not to exceed twenty days, the commissioner shall provide the person an opportunity to be heard and to present any proof that such condition or activity does not constitute a danger to the health of the people.

7. Review by courts.

All orders or determinations of the commissioner or the department shall be subject to review as provided in article 78 of the civil practice law and rules. Application for such review must be made within sixty days after service in person or by mail of a copy of the determination or decision upon the attorney of record of the applicant and of each person who has filed a notice of appearance, or to the applicant in person directly if not represented by an attorney.

Section 2. Section 3.08A of Local Law No. 1-1960 constituting the Erie County Administrative Code, as amended, is amended to read as follows:

Section 3.08A. [Division of planning;] [c] County development coordination board.

[a. The planning director shall be the head of the division of planning and shall be a person qualified by professional training and experience in the field of regional, county, or municipal planning. The planning director shall have and exercise all the powers of a county planning board heretofore or hereafter lawfully granted or imposed by the county charter, by this code, by local law, ordinance, or resolution of the county legislature, by the county executive, or by any applicable provisions of any act of the legislature not inconsistent with the county charter or this code.]

[b.] There shall be a county development coordination board consisting of 9 members who shall be as follows: the commissioner of [environmental quality;] health; the commissioner of public works; the chairman of the environmental management council, or his designee; a member of the county legislature selected by the chairman of the legislature as being chairman of the appropriate committee of the legislature dealing with matters within the jurisdiction of the county development coordination board; five persons designated by the county executive subject to confirmation by the county legislature and which persons are

not county officials or employees. The county executive shall designate one of the nine members to serve as chairman of the board during the pleasure of the county executive. The five members of the board designated by the county executive shall serve for a term of two years. Meetings of the board shall be held at the call of the chairman or the [director of planning] commissioner of environment and planning on three days' written notice mailed to the last known address of such board members. The members of the board shall receive no salary or compensation for their services as members of such board, but shall, within the appropriations provided therefor, be entitled to actual disbursements and expenses in performing the duties of their office. The county development coordination board shall be advisory to the [director of planning] commissioner of environment and planning in matters related to comprehensive regional, county, and municipal planning.

Section 3. This Local Law is to be effective immediately.

Adopted by Legislature 9/8/77

Signed by County Executive Regan 9/22/77

9/22/77 Filed with Secretary of State

9/26/77 Received acknowledgement from Secretary of State

