

**COUNTY OF ERIE****LOCAL LAW NO. \_\_\_\_ -2018****LOCAL LAW INTRO NO. 7-1 2018****THE PUBLIC HEALTH PROTECTION ACT OF 2018**

Be it enacted by the Legislature of the County 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.

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:**

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