

*Local Law Filing*

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County  
 City of Erie  
 Town  
 Village

FILED  
STATE RECORDS

DEC 07 2009

Local Law No. 4 of the year 20 09 DEPARTMENT OF STATE

A local law prohibiting the use of wireless handsets to compose, read or send text messages,  
(Insert Title)

e-mails or Twitter while operating a motor vehicle in Erie County.

Be it enacted by the Legislature of the  
(Name of Legislative Body)

County  
 City of Erie  
 Town  
 Village

as follows:

A LOCAL LAW prohibiting the use of wireless handsets to compose, read or send text messages, e-mails or Twitter while operating a motor vehicle in Erie County.

BE IT ENACTED BY THE COUNTY OF ERIE AS FOLLOWS:

**SECTION 1.**

**Title.** This law shall be known as the "Anti-Texting and/or Twittering While Driving Law"

(If additional space is needed, attach pages the same size as this sheet, and number each.)

**SECTION 2.** **Intent.** The quantity of in-vehicle communication devices continues to grow and numerous studies and reports point out the relationship and dangerous effects of driver distraction and motor vehicle accidents, the Erie County Legislature recognizes a need to protect citizens from accidents and serious physical injuries caused by driver distraction from use of in-vehicle communication devices. The purpose of the Local Law is to protect the public interest, welfare, health and safety within the County of Erie by reducing the incidence of distracted driving and improving the safety on our roadways. Specifically, the law would ban motorists from using wireless handsets to compose, read, or send text messages, e-mails or twitter while operating a motor vehicle on any public street or public highway in Erie County. The Erie County Legislature notes that according to studies conducted by the American Automobile Association (AAA), any activity that takes a driver's attention off the road for more than two seconds can double a driver's risk of a crash. The United States government estimates that 30% of all crashes in the United States result from driver distraction. Statistics from the New York State Department of Motor Vehicles, in 2006, also indicate that nearly 30% of accidents in the State involve driver distraction or inattention. The Erie County Legislature further recognizes that in response to the growing danger of distracted driving and the increasing number of accidents involving cell phone usage while driving, the New York State Legislature passed a state-wide ban on the use of hand-held cell phones while driving. However, the Erie County Legislature also recognizes that when New York banned motorists from talking on hand-held cellular phones in 2001, text messaging was fairly uncommon. However, since that time, text messaging has become an increasingly popular form of communication. In fact, the Cellular Telecommunications and Internet Association ("The Wireless Association") reported that there were 251.45 million U.S. wireless subscribers in 2006 that sent 158 billion text messages, an increase of 95% from 2005, translating into approximately 300,000 text messages per minute. The Erie County Legislature further notes that text

messaging is now one of the latest electronic fads and driving dangers and a recent national survey found that 19% of motorists between the ages of 18 and 60 admitted to text messaging while driving, while 37% of drivers between the ages 18 and 27 indicated that they do so. The Erie County Legislature has concluded based upon all available information and data that text messaging, e-mailing and/or tweeting are especially dangerous since these practices require drivers to take their eyes and mind off the road, as well as their hands off the steering wheel. In response to this threat to the public safety, the Erie County Legislature believes it is necessary and appropriate to provide law enforcement with yet another tool to combat this dangerous practice.

### **SECTION 3.                   Definitions.**

Whenever used in this Local Law, the following terms shall be defined as follows unless the context or subject matter otherwise requires:

1. “Hands Free” shall mean the manner in which a wireless handset is operated for the purpose of composing, reading or sending text messages, by using an internal feature or function, or through an attachment or addition, including but not limited to an ear piece, head set, remote microphone or short range wireless connection, thereby allowing the user to operate said device without the use of hands.
2. “Inoperability” shall mean a motor vehicle that is incapable of being operated or being operated in a safe and prudent manner due to mechanical failure, including but not limited to engine overheating or tire failure.
3. “Motor Vehicle” shall mean any vehicle that is self-propelled by a motor, including but not limited to, automobiles, trucks, vans, construction vehicles, etc.
4. “Person” shall mean any natural person, corporation, unincorporated association, firm, partnership, joint venture, joint stock association or other entity or business organization of any kind.
5. “Stopped” shall mean not in motion.
6. “Text Message”, also referred to as short messaging service (SMS), shall mean the process by which users send, read, or receive messages on a wireless handset, including but not limited to, text messages, instant messages, electronic messages or e-mails, in order to communicate with any person or device.
7. “Use” shall mean to hold a wireless handset in one’s hands.
8. “Wireless Handset” shall mean a portable electronic or computing device, including cellular telephones and digital personal assistants (PDAs), capable of transmitting data in the form of a text message.

### **SECTION 4.                   Prohibited Uses of Electronic Devices While Operating A Motor Vehicle.**

1. No person shall use a wireless handset to compose, read or send text messages while operating a motor vehicle on any public street or public highway within the County of Erie.
2. Notwithstanding subsection 1., this law shall not be construed to prohibit the use of any wireless handset by:
  - (a) Any law enforcement, public safety or police officers, emergency services officials, first aid, emergency medical technicians and personnel, and fire safety officials in the performance of duties arising out of and in the course of their employment as such;
  - (b) A person using a wireless handset to contact an individual listed in subsection (a); or
  - (c) A person using a wireless handset inside a motor vehicle while such motor vehicle is parked, standing or stopped and is removed from the flow of traffic in accordance with applicable laws, rules or ordinances, or is stopped due to inoperability of such motor vehicle.
3. Notwithstanding subsection 1., this local law shall not be construed to prohibit a person operating a motor vehicle from utilizing a hands-free wireless handset.

## **SECTION 5. Enforcement and Penalties.**

1. A violation of any provisions of this local law shall constitute an offense and be punishable by a fine of an amount of \$150.00 for each single violation. Each such violation shall constitute a separate and distinct offense.
2. This local law shall be enforced by the Erie County Sheriff's Department and may be enforced by any other law enforcement agency having jurisdiction within the County of Erie.

## SECTION 6.      Reverse Preemption.

This law shall be null and void on the day that Statewide or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent State or Federal administrative agency issues and promulgates regulations preempting such action by the County of Erie. The Erie County Legislature may determine via resolution whether or not identical or substantially similar statewide legislation has been acted for the purposes of triggering the provisions of this section.

## SECTION 7. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this 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 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 application to the person, individual corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**SECTION 8.                   Effective Date.**

This Local Law shall take effect immediately.

**SPONSORED BY**

**LEGISLATOR TIMOTHY M. WROBLEWSKI  
LEGISLATOR TIMOTHY M. KENNEDY**

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable (Name of Legislative Body) provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. 4 \_\_\_\_\_ of 20 09 of the (County)(City)(Town)(Village) of Erie \_\_\_\_\_ was duly passed by the Erie County Legislature \_\_\_\_\_ on October 22 20 09, and was (approved) (not approved) (Name of Legislative Body) (repassed after disapproval) by the Erie County Executive \_\_\_\_\_ and was deemed duly adopted (Elective Chief Executive Officer\*) on November 18 20 09, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved) (not approved) (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_.

(Elective Chief Executive Officer\*) Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved) (not approved) (Name of Legislative Body) (repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_. Such local

(Elective Chief Executive Officer\*) law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

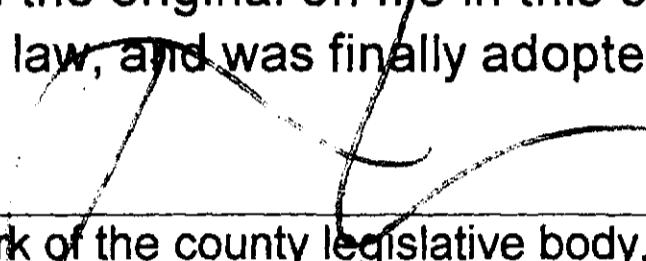
I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20 \_\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20 \_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 2 \_\_\_\_\_, above.

  
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 12-1-09

(Seal)

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF Erie

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

  
Signature  
Gregory P. Kammer, Assistant Erie County Attorney  
Title

County  
 City  Village Erie  
 Town  Village

Date: 12/01/2009