

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(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.

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED

MAY 19 2005

County

~~City~~

~~Town~~

~~Village~~

of Erie

Local Law No. 5 of the year 2005

MISCELLANEOUS
& STATE RECORDS

A local law to be known as the Erie County Local Law to prohibit the sale, purchase and use of Alcohol Without Liquid (AWOL) Machines or Alcohol Vapor Devices within Erie County.

Be it enacted by the Legislature of the

County

~~City~~

~~Town~~

~~Village~~

of Erie

as follows:

SECTION 1. Short title

This Local Law shall be known as the "Erie County Local Law to prohibit the Sale, Purchase and use of Alcohol Without Liquid (AWOL) Machines or Alcohol Vapor Devices within Erie County."

SECTION 2 Legislative intent

This Legislature hereby finds and determines that AWOL, and acronym for Alcohol With Out Liquid, is a machine that mixes spirits with pure oxygen. A cloudy alcohol vapor is created by pouring spirit with pure oxygen. A cloudy alcohol vapor is created by pouring a spirit into a "diffuser capsule" connected to an oxygen pipe, which can then be inhaled or snorted.

This Legislature also finds and determines that AWOL machine enables people to "snort" drinks such as vodka or absinthe through a tube into the nose or mouth, rather than drinking through the mouth. This Legislature further finds and determines that by bypassing the stomach and the filter of the liver, the alcohol vapor is absorbed through the blood vessels in the nose or lungs, creating a quicker and more intense hit on the brain.

This Legislature finds that experts have claimed that the practice of inhaling alcohol vapor is linked to causing brain damage.

The Legislature determines that the popularity of these AWOL machines is increasing in the nightclub and bar businesses throughout the county. It is being marketed as a way to get high without the hangover as well as a "dieter's dream" way of drinking since there are no calories derived from inhaling alcohol.

This Legislature further finds and determines that during the past two decades five major studies have estimated the economic cost of alcohol abuse in the United States at approximately \$185 billion for 1998.

This Legislature further finds that more than 70 percent of the estimated cost of alcohol abuse for 1998 were attributed to lost productivity (134.2 billion), including losses from alcohol-related illness (\$87.6 billion), premature death (\$36.5 billion), and crime (10.1 billion). The remaining estimated cost include health care expenditures (\$26.3 billion), as well as property and administrative cost of alcohol related motor vehicle crashes (\$16.7 billion), and criminal justice system cost of alcohol relates crime (\$6.3 billion).

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

This Legislature further determines that by the time they reach the eighth grade nearly 50 percent of adolescents have had at least one drink, and over 20 percent report having been "drunk". Approximately 20 percent of eighth graders and almost 50 percent of twelfth graders have consumed alcohol in the past 30 days. Approximately 30 percent of twelfth graders engage in heavy episodic drinking, now popularity termed "binge" drinking- that is, having at least five or more drinks on one occasion within the past 2 weeks –and it is estimated that 20 percent do so on more than one occasion. Apart from being illegal, underage drinking poses a high risk both the individual and society. For example, the rate of alcohol-related traffic crashes is greater for drivers ages 16 to 20 than for drivers 21 and older.

This Legislature further finds and determines that underage alcohol use is more likely to kill young people than all illegal drugs combined.

The Legislature further finds that AWOL machines have been banned in parts of Britain and Australia, but are gaining more popularity in the United States. They are available for sale and distribution through the internet and dealerships are in the process of being established in Florida, California, and New York.

Therefore, the purpose of this law is to ban the sale, purchase, and use of Alcohol With Out Liquid (AWOL) machines and alcohol vapor devices in Erie County.

SECTION 3. Definitions.

As used in this law, the following terms shall have the meanings indicated

- A.) "AWOL" shall mean a device which mixes spirits with pure oxygen to produce a cloudy vapor which can be inhaled or snorted.
- B.) "Person" shall mean any natural person, individual, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity or business organization of any kind.

SECTION 4. Prohibitions.

Pursuant to Article 9, Section 2(C) 10 of the New York State Constitution, governing protection, health, safety, and well-being of persons, no person shall purchase, offer for sale of use an AWOL machine or alcohol vapor device within the County of Erie.

SECTION 5. Penalties

Any person who intentionally violates any provision of Section 3 of this law shall be guilty of an unclassified misdemeanor, punishable by a fine of up to One Thousand Dollars (\$1,000.00). Each violation shall constitute a separate and distinct offense.

SECTION 6. Applicability.

This law shall apply to any action occurring on or after the effective date of this law.

SECTION 7. 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 County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggered the provisions of this section.

SECTION 8. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this 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 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 9. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(C)(20),(21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATION (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Erie County Department of Environment and Planning (DEP) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

(1-b)

SECTION 10. Effective Date.

This law shall take effect immediately upon filing in the Office of Secretary of State.

(1-c)

(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 provisions of law.
(Name of Legislative Body)

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. 5 of 2005 of the (County)(City)(Town)(Village) of Erie was duly passed by the Erie County Legislature on April 21, 2005, and was (approved)(~~not approved~~)(repassed after ~~disapproval~~) by the Erie County Executive and was deemed duly adopted on May 12, 2005, in accordance with the applicable provisions of law.
(Elective Chief Executive Officer)*

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)(repassed after disapproval) by the _____ on _____ 20____. 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.
(Elective Chief Executive Officer)*

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)(repassed after disapproval) by the _____ on _____ 20____. Such local 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)*

* 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.

Kevin M. Kelley
Clerk of the County legislative body ~~City, Town or Village Clerk~~
~~Secretary of the County legislative body~~ Kevin M. Kelley

(Seal)

Date: May 17, 2005

(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

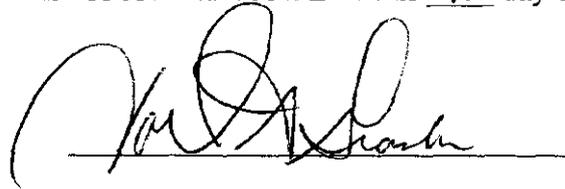
I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Gregory J. Dudek
Signature
Gregory J. Dudek
Assistant County Attorney
Title

County
~~City~~ of Erie
~~Town~~
~~Village~~

Date: May 18, 2005

A Public Hearing was held on the foregoing Local Law Intro. No. 6-2005 on Tuesday, May 10, 2005, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, JOEL A. GIAMBRA, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 12 day of May, 2005.

A handwritten signature in black ink, appearing to read "Joel A. Giambra", is written over a horizontal line.

A Public Hearing was held on the foregoing Local Law Intro. No. 6-2005 on Tuesday, May 10, 2005, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, JOEL A. GIAMBRA, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this ____ day of May, 2005.
