

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
DEC 22 2003

**MISCELLANEOUS
& STATE RECORDS**

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

Local Law No. 8 of the year 20⁰³

A local law in relation to a mandatory notification requirement for
(insert Title)
commercial and residential lawn pesticide applications.

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

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

as follows:

Section 1. Title.

This law shall be known as the Erie County Mandatory Pesticide Notification Act.

Section 2. Legislative Intent.

The Erie County Legislature hereby finds, declares and determines that individuals and their personal property can come into unintended contact with pesticides applied on abutting property from commercial and residential lawn applications. This Legislature further finds that pesticides may pose health and safety risks to the citizens of this County.

During 2003, Erie County, through its Department of Environment and Planning, implemented the Cooperative Pesticide Notification Program to provide information to interested county residents who wished to receive prior notification of pesticide applications on neighboring property within two hundred (200) feet of application for spray applications and adjacent property for non-spray applications. This Program would allow county residents to take the steps they deem necessary to minimize any such unintended contact to themselves, their families, or their personal property. As a result of the creation of the Cooperative Pesticide Notification Program, over 12,000 people in Erie County expressed a desire to receive prior notification pesticides applied on neighboring and adjacent property.

Therefore, the Erie County Legislature does hereby conclude that Erie County should adopt the notice requirements for the commercial and residential lawn application of pesticides as set forth in Section 33-1004 of the New York Environmental Conservation Law. It is intended that this Local Law be read and applied consistently with that section and all other applicable provisions of the Environmental Conservation Law and the regulations promulgated thereunder.

Section 3. Definitions.

All terms used herein shall be as defined in Article 33 of the New York Environmental Conservation Law:

- a. "Abutting property" shall mean any property which has any boundary or boundary point in common with the property on which the pesticide is to be applied.
- b. "Agency" means any state agency; municipal corporation; public authority; college, as that term is defined in the education law; railroad, as that term is defined in the railroad law; or telegraph, telephone, telegraph and telephone, pipeline, gas, electric, or gas and electric corporation as those terms are defined in the transportation corporations law, which applies pesticides.
- c. "Commercial lawn application" means the application of pesticide to ground, trees, or shrubs on public or private outdoor property. For the purposes of this local law the following shall not be considered commercial lawn application:
 - (1) the application of pesticide for the purpose of producing an agricultural commodity;
 - (2) residential application of pesticides;
 - (3) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
 - (4) the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one-hundred feet of a dwelling, multiple dwelling, public building, or public park; and
 - (5) the application of pesticides on golf courses or turf farms.
- d. "Commissioner" means the Commissioner of the New York State Department of Environmental Conservation.
- e. "Dwelling" means any building or structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place for one or two families.
- f. "General use pesticide" means a pesticide which does not meet the state criteria for a restricted pesticide as established under authority of section 33-0303 of the New York Environmental Conservation Law.
- g. "Multiple dwelling" means any dwelling which is to be occupied by or is occupied as the residence or home of three or more families living independently of each other.
- h. "Pesticide" means:
 - (1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; and

- (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- i. "Premises" means land and improvements or appurtenances or any part thereof.
- j. "Residential lawn application" means the application of general use pesticides to ground, trees, or shrubs on property owned by or leased to the individual making such application. For the purposes of this local law, the following shall not be considered residential lawn application:
 - (1) the application of pesticides for the purpose of producing an agricultural commodity;
 - (2) the application of pesticides around or near the foundation of a building for the purpose of indoor pest control;
 - (3) the application of pesticides by or on behalf of agencies except that agencies shall be subject to visual notification requirements pursuant to section 33-1003 of the New York Environmental Conservation Law where such application is within one hundred feet of a dwelling, multiple dwelling, public building or public park; and
 - (4) the application of pesticides on golf courses or turf farms.

Section 4. Notification Requirements For Commercial And Residential Lawn Applications.

The provisions in this section are adopted in their entirety and without exception, pursuant to section 33-1004 of the New York Environmental Conservation Law.

a. Retail Consumer Information Sign.

- (1) All retail establishments that sell general use pesticides for commercial or residential lawn application shall display a sign meeting standards, established by the Commissioner pursuant to subdivision one of section 33-1005 of the Environmental Conservation Law, in a conspicuous place, and such sign shall be placed as close as possible to the place where such pesticides are displayed.

b. Prior Notification of Commercial Lawn Applications.

- (1) At least forty-eight hours prior to any commercial lawn application of a pesticide, the person or business making such application shall supply written notice, as defined in subdivision three of section 33-1005 of the New York Environmental Conservation Law, to:
 - a. occupants of all dwellings on abutting property with a boundary that is within one hundred fifty feet of the site of such application; and to

(1-b)

- b. owners, owner's agents, or other persons in a position of authority for all other types of premises that are on abutting property with a boundary that is within one hundred fifty feet of the site of such application. Owners or owner's agents of multiple family dwellings shall supply such written notice to the occupants of such multiple family dwellings and for all other types of premises, owners, owner's agents or other persons in a position of authority shall post such written notice in a manner specified by the Commissioner.

(2) Such prior notification provisions shall not apply to the following:

- a. the application of anti-microbial pesticides and anti-microbial products as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in 7 U.S.C. Section 136 (mm) and 136 q (h) (2);
- b. the use of an aerosol product with a directed spray, in containers of eighteen fluid ounces or less, when used to protect individuals from an imminent threat from stinging and biting insects, including venomous spiders, bees, wasps and hornets. This section shall not exempt from notification the use of any fogger product or aerosol product that discharges to a wide area;
- c. the use of non-volatile insect or rodent bait in a tamper resistant container;
- d. the application of a pesticide classified by the United States Environmental Protection Agency as an exempt material under 40 CFR Part 152.25;
- e. the application of a pesticide which the United States Environmental Protection Agency has determined satisfies its reduced risk criteria, including a biopesticide;
- f. the use of boric acid and disodium octaborate tetrahydrate;
- g. the use of horticultural soap and oils that do not contain synthetic pesticides or synergists;
- h. the application of a granular pesticide, where granular pesticide means any ground applied solid pesticide that is not a dust or powder;
- i. the application of a pesticide by direct injection into a plant or the ground;
- j. the spot application of a pesticide, where spot application means the application of pesticide in a manually pressurized or non-pressurized container of thirty-two fluid ounces or less to an area of ground less than nine square feet;
- k. the application of a pesticide to the ground or turf of any cemetery; and

(1-c)

- i. an emergency application of a pesticide when necessary to protect against any imminent threat to human health, provided, however, that prior to any such emergency application, the person providing such application shall make a good faith effort to supply the written notice required pursuant to this title. Upon making an emergency application, the person making such application shall notify the Commissioner of the New York State Department of Health, using a form developed by such Commissioner for such purposes that shall include minimally the name of the person making such application, the pesticide business registration number or certified applicator number of the person making such application, the location of such application, the date of such application, the product name and United States Environmental Protection Agency registration number of the pesticide applied and the reason for such application.

c. Posting of Residential Lawn Applications.

- (1) All persons performing residential lawn applications treating an area more than one hundred square feet shall affix markers to be placed within or along the perimeter of the area where pesticides will be applied. Markers are to be placed so as to be clearly visible to persons immediately outside the perimeter of such property. Such markers shall be posted at least twelve inches above the ground and shall be at least four inches by five inches in size.
- (2) The markers required pursuant to this paragraph shall be in place on the day during which the pesticide is being applied and shall instruct persons not to enter the property and not to remove the signs for a period of at least twenty-four hours. Such instruction shall be printed boldly in letters at least three-eighths of an inch in height.

Section 5. Enforcement.

- a. Pursuant to section 33-1004 of the New York Environmental Conservation Law, the Erie County Department of Health shall enforce the provisions of this local law administratively, provided that all sanctions, which shall be assessed after providing a hearing or opportunity to be heard, shall be as specified in Section 6 of this law and shall be payable to and deposited with Erie County.

(1-d)

Section 6. Penalties.

a. Administrative Sanctions

- (1) A person providing a commercial lawn application who violates any provision of this local law shall be liable for a civil penalty not to exceed five thousand dollars for a first violation, and not to exceed ten thousand dollars for a subsequent offense after a hearing or opportunity to be heard.
- (2) An owner or owner's agent of a multiple dwelling or owner, owner's agent or a person in a position of authority for all other types of premises, who violates any rule or regulation pursuant to subdivision b (1)(b) of section 4 of this local law (Prior Notification of Commercial Lawn Applications), and a person who violates any provision of subdivision c of section 4 (Posting of Residential Lawn Applications), shall for a first such violation, in lieu of a penalty, be issued a written warning and shall also be issued educational materials prepared by the Commissioner pursuant to subdivision two of section 33-1005 of the New York Environmental Conservation Law. Such person shall, however, for a second violation, be liable for a civil penalty not to exceed one hundred dollars, and not to exceed two hundred fifty dollars for any subsequent violation after a hearing or opportunity to be heard.
- (3) Any person who violates the provisions of subdivision a of section 4 of this local law (Retail Consumer Information Sign) shall be issued a warning for the first violation and shall be provided seven days to correct such violation; and shall be liable for a civil penalty not to exceed one hundred dollars for a second violation, and not to exceed two hundred fifty dollars for a subsequent violation after a hearing or opportunity to be heard.

b. Criminal Sanctions for Persons Providing Commercial Lawn Applications.

- (1) Any person providing a commercial lawn application and having the culpable mental states defined in subdivision one or two of section 15.05 or in section 20.20 of the New York Penal Law, who violates any provision of this local law, except an offense relating to the application of a general use pesticide, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine not to exceed five thousand dollars for each day during which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for a subsequent offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine not to exceed ten thousand dollars for each day during

(1-e)

which such violation continues or by imprisonment for a term of not more than one year, or by both such fine and imprisonment.

- (2) Any person providing a commercial lawn application who violates any provision of this local law relating to the use of a general use pesticide shall be guilty of a violation and, upon conviction thereof, shall be punished by a fine not to exceed twenty-five hundred dollars. If the conviction is for a subsequent offense committed after the first such conviction of such person under this subdivision, punishment shall be a fine not to exceed five thousand dollars.

Section 7. Severability.

- a. 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 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. Review of Local Law

- a. No later than October 15, 2004, the Erie County Environmental Management Council shall undertake an official review to evaluate this Local Law. Within thirty (30) days of commencement of the review, the Erie County Environmental Management Council shall provide the Legislature, the County Executive, the Department of Environment and Planning and the Department of Health with its findings and/or recommendations with respect to this Local Law.

Section 9. Notice Requirements to State Officials.

- a. Within twenty days after adoption of this law, the Clerk of the Erie County Legislature shall forward one certified copy thereof to the Commissioner of the New York State Department of Environmental Conservation and one to the New York State Attorney General.

(1-f)

Section 10. Effective Date.

- a. This local law shall take effect immediately upon filing with the Secretary of State pursuant to Section 27 of the New York State Municipal Home Rule Law provided, however that the provisions of this local law shall expire and be deemed repealed on and after January first, the year two thousand and five.

(1-g)

(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. 8 of 2003 of the (County)(City)(Town)(Village) of Erie was duly passed by the Erie County Legislature on December 4, 2003, and was (approved)(~~not approved~~)(repassed after ~~disapproval~~) by the Erie County Executive and was deemed duly adopted on December 19, 2003, 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.)

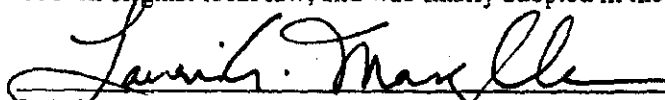
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified 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 _____, above.



Clerk of the County legislative body, City, Village or Town Clerk
or other designated local legislative body.

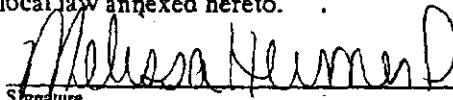
(Seal)

Date: December 19, 2003

(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

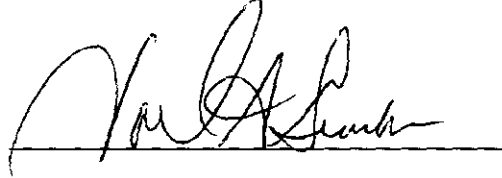
Assistant County Attorney

Title

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

Date: December 19, 2003

A Public Hearing was held on the foregoing Local Law Intro. No. 14-2003 on Friday, December 19, 2003, 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 19 day of December, 2003.



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. 14-2003 on Friday, December 19, 2003, 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 December, 2003.
