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DEPARTMENT OF LAW

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July 9, 2025

VIA E-MAIL ONLY

Hon. Timothy J. Meyers, Chairman
Erie County Legislature
Old Erie County Hall
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Opinion as to Form Local Law Intro No. 2-1 2025

Dear Chairman Meyers:

In accordance with the obligations of the Erie County Attorney set forth in subsection 3, Section 204 of Article 2 of the Erie County Charter, this legal opinion concerns Local Law Intro No. 2-1 2025 (2-1).

Preemption

Under New York state law, preemption occurs when a local law directly conflicts with a state statute, or where a state statute expressly states that local laws on a given subject matter are preempted. Preemption can also occur where the State Legislature has assumed full regulatory responsibility in a field related to the proposed local law.

Here, the provisions of 2-1 do not present any direct conflicts with state statute and since New York State Municipal Law specifically authorizes counties in New York State to adopt and amend local Charters, 2-1 does not present a preemption issue of concern.

Amendments to 2-1 suggested by the Department of Law pursuant to Erie County Charter Article 2 Section 204 ("204")

1. Section 15 of 2-1 creates new Sections 507 and 508 of Erie County Charter Article 5 which establish a Division of Emergency Medical Services ("EMS") within the Department of Health and delineate the powers and duties of the deputy commissioner who shall head the newly established Division. It appears that the language used in Section 15 of 2-1 to create the new Sections 507 and 508 largely mirrored the language of Erie County Administrative Code Article 14, Section 14.03 (the "Code") which historically had placed EMS within the Erie County Department of Homeland Security and Emergency Services. The use of the Code language inadvertently granted the deputy commissioner heading EMS with additional powers and duties outside the scope of the EMS role. This transcription error can be corrected by amending 2-1 to replace Section 15 as follows:

Section 15.

Article 5 of the Erie County Charter is hereby amended by adding Sections 507 and 508 as follows:

Section 507. Powers and duties of the Division of Emergency Medical Services.

The Deputy Commissioner of Emergency Medical Services shall have and exercise all the powers and duties granted or imposed by the laws of the state of New York upon a county director of emergency medical services, and all the duties 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 order or direction of the County Executive, or by applicable provision of any act of the state legislature not inconsistent with the county charter or this code.

Section 508. Division of Emergency Medical Services

There shall be within the Department a Division of Emergency Medical Services which shall be headed by a Deputy Commissioner who shall be appointed by the County Executive, subject to confirmation by the County Legislature, to serve at the pleasure of the County Executive. The Deputy Commissioner of Emergency Medical Services shall maintain advanced life support response readiness as outlined by article 30 of the public health law; maintain pre-hospital educational initiatives; initiate coordination of mass casualty incidents and large scale planned events; coordinate public health preparedness planning and response of emergencies.

2. Section 41 of 2-1 purports to amend Erie County Charter Article 22, Section 2205 to remove the two-term limit for service of advisory board members. While the amendments made to Section 2205(4) work to remove such term limit, Section 2205(5) was left with a working reference to the two-year limit. This inadvertent remaining reference can be corrected by amending 2-1 Section 41 to replace 2205(5) with the following:

5. The creating authority shall fill any vacancies through a public application process opened within sixty days. If a member leaves a board before the end of his or her term, the replacement shall serve for the duration of the term.

It is the opinion of this office that amending 2-1 in the manner suggested above is consistent with the provisions of 204 and that the holding of a second public hearing by the Legislature is not required.

Amendments made to 2-1 by the Erie County Legislature pursuant to 204

In compliance with Erie County Charter Article 2 Section 204(1), the Erie County Legislature held a public hearing regarding 2-1 on June 26, 2025. It is the understanding of this office that, based on comments heard at the public hearing, Section 6 of 2-1, which adds a new Section 212 to Article 2 of the Erie County Charter, was amended to require that any rules created by the Chair of the Legislature regarding public comment prior to a meeting of the Legislature shall be adopted by the legislature in their Rules of Order.

Based on further comments heard at the public hearing, this office understands that several typographical errors were corrected in 2-1. These included the re-numbering of certain Sections, the correction of misspelled words, the correction of Section references, and the removal of pronouns in certain Sections.

It is the opinion of this office that the above amendment and typographical corrections were made in a manner consistent with the provisions of 204 and that the holding of a second public hearing by the Legislature is not required.

Grammar

The stated purpose of 2-1 is to amend the Erie County Charter to modernize its provisions and enhance the fiscal oversight and financial stability of the County. Should the amendments proposed by the Department of Law above be incorporated into 2-1 prior to passage, we find the grammar and usage of 2-1 to be sufficient in order to achieve the stated purpose.

Ambiguities

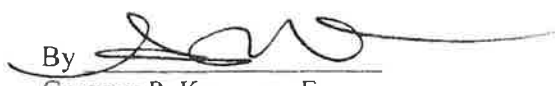
While every hypothetical circumstance or eventuality cannot be addressed in the scope of this opinion, should the amendments proposed by the Department of Law above be incorporated into 2-1 prior to passage, we find that 2-1 does not present any facial ambiguities that would frustrate its implementation and enforcement.

Conclusion

Should the amendments proposed by the Department of Law above be incorporated into 2-1 prior to passage, we find that Local Law Intro. 2-1 2025 is sufficient as to form.

Respectfully yours,

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By 

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