

# 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.

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STATE RECORDS

SEP 17 2021

County  City  Town  Village  
(Select one.)

of Buffalo

DEPARTMENT OF STATE

Local Law No. 2 of the year 2021

A local law amending the City of Buffalo Charter in relation to Article 13 to create a new section §  
(insert Title)  
13-21 Entitled "Right to Know Law"

Be it enacted by the Common Council of the  
(Name of Legislative Body)

County  City  Town  Village  
(Select one.)

of Buffalo

as follows:

Section 1: that Article 13, of the Charter of the City of Buffalo, adopted pursuant to law is hereby amended to create a new Section, § 13-21 Entitled "Right to Know Law."

§ 13-21 Right to Know Law.

The passage of the this local law will protect the constitutional rights of the people and visitors to the City of Buffalo by creating an affirmative obligation on law enforcement officers to inform individuals of their privacy rights when being searched by the police. This law will increase transparency in police practices and build trust between police officers and members of the public by providing individuals with the reasons behind their encounters in situations that do not result in an arrest or summons.

§ 13-21-A Definitions.

A. As used in this local law the following words shall have the following meanings:

Department. The term "department" means the City of Buffalo Police Department (the "BPD")

Law enforcement activity. The term "law enforcement activity" means any of the following activities when conducted by a sworn Buffalo Police Officer:

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

- i. Noncustodial questioning of individuals.
- ii. Stops where an officer has an individualized, reasonable suspicion that the individual stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter.
- iii. Frisks.
- iv. Searches of citizens or property, including vehicles.
- v. Roadblock or checkpoint stops.
- vi. Home searches.
- vii. Investigatory questioning of victims or witnesses to crimes.
- viii. Traffic stops.

**Noncustodial questioning.** The term “noncustodial questioning” means the questioning of an individual by a police officer and said individual has not been detained and is free to end the encounter at will.

**Officer.** The term “officer” means a sworn member of the City of Buffalo Police Department.

**Stop Receipt.** The term “stop receipt” means a receipt given by a police officer following law enforcement activity involving a vehicular stop that does not result in a custodial arrest, the issuance of a traffic citation, the issuance of a “fix-it ticket,” or the issuance of an appearance ticket. The stop receipt must contain the following information in t§13-21 C below. Stop receipts shall be considered a “record” within the meaning of New York Public Officers Law § 86 (4). 1. At no time shall “stop receipts” be issued for pedestrian stops.

**Level one investigative encounter.** The term “level one investigative encounter” means an officer’s request for information based on an objective credible reason to approach. At this level, the officer is not required to tell the individual the reason for questioning. The officer does not have to offer a business card. However, an individual has the right to request a business card, and if done, the officer has a duty to provide it.

**Level two investigative encounter.** The term “level two investigative encounter” means a common law right of inquiry based on an officer’s founded suspicion that criminal activity is afoot.

**Level three investigative encounter.** The term “level three investigative encounter” means a stop and/or frisk based on an officer’s reasonable suspicion that an individual has committed, is committing or is about to commit a felony or misdemeanor. An individual is not free to leave and if the officer believes they are armed, the officer may frisk said individual, and potentially search them without first obtaining consent. If the encounter does not result in an arrest, or summons, the individual shall be given a business card containing the officer’s information in § 13-21 B-2 below.

**Level four investigative encounter.** The term “level four investigative encounter” means an arrest and/or full search incident to arrest based on probable cause that a violation has

occurred.

**B. Law enforcement activities.**

Upon initiation of law enforcement activities, an officer shall:

1. Visibly display both a name tag and a badge number on the officer's outermost garment for identification purposes.
2. Identify himself or herself to the individual who is the subject of law enforcement activity by providing his or her name, rank and command.
3. Provide to the individual an explanation for the law enforcement activity orally and in the form of a stop receipt at the completion of the interaction, except in situations that would not require a stop receipt, such as searches that lead to a summons, citation, or an arrest, or a pedestrian stop.

**C. A Stop Receipt shall include the following:**

1. an incident number, with the date, time, location and reason for the stop.
2. the stopped citizen's name, date of birth, and race.
3. the vehicle information, including the license plate number; and
4. the name, rank, and badge number of the officer(s).

**§13-22 Issuing Stop receipts Only for vehicle in motion.**

1. When an individual in a vehicle is stopped by a law enforcement officer, whether for a roadblock or checkpoint stop, a traffic stop, or any other stop wherein the individual is detained but not arrested, regardless of whether he/she is legally free to move on, or not, that officer, upon approaching a stopped vehicle, must immediately tell the individual the reason for the stop, and at the completion of the encounter, complete a form indicating the reason and the alleged violation observed. This form shall be known as a "Stop Receipt," pursuant to §13-21 C above.
2. The Department shall keep a record of all stop receipts and shall make all stop receipts data publicly available on the City of Buffalo Open Data Portal, within 45 days of issuance.

**§13-23 Providing officers' business cards**

- A. Following law enforcement activities that result in an arrest, summons, or stop receipt being issued in the presence of other individuals the officer shall:
1. Offer a business card to any other individual who is present on the scene and

requests the officer's information but was not the subject of the arrest, summons, or stop receipt.

2. Not engage a minor, who is not the subject of the arrest, summons, or stop receipt, if the officer has objective credible reason to believe that the individual requesting the business card is a minor. Notwithstanding, a minor who is the subject of the arrest, summons, or stop receipt, must be provided with the required information, pursuant to this law.
    - i. A parent or legal guardian shall have the right to request the information regarding the incident witnessed by said minor, by contacting BPD's internal affairs unit directly.
  3. If the officer on the scene does not have available business cards, the information in §13-21 B (2) above must be provided verbally and allow the individual sufficient time to record the information.
  4. An officer's business card shall be sufficient for all other law enforcement activities **Not** involving a vehicle in motion.
- B. Notwithstanding the provisions of §13-21B (2) above, an officer not engaged in a law enforcement activity as defined in §13-21-A above, shall provide a business card to any individual requesting identifying information or provide the information verbally when the officer does not have available pre-printed business cards or hand-written cards on hand, and allow sufficient time for the individual to record the information.
- C. The Commissioner must ensure that all officers have an adequate number of business cards prior to commencing their shifts, however, the lack of business cards whether *pre-printed or hand-written shall not be indicative of an officer's wrongdoing or* prevent an officer from undertaking his sworn duties.

#### **§13-24 Business cards in lieu of a stop receipt**

- A. Law enforcement activities that involve a vehicle in motion requires an officer to provide a stop receipt to the subject of the stop. However, an officer may provide the subject of a stop with a business card **Only** if a stop receipt is inaccessible at the time of the incident such as, but not limited to: when it is tactically impractical for an officer to give the subject of the law enforcement activity a stop receipt, when the officer is too far away from their vehicle to print the stop receipt and the subject of the law enforcement activity will not voluntarily accompany the officer back to the officer's vehicle for said receipt, or when an officer receives a high priority call and time is of the essence. Any business card issued by the officer in any one of the above instances must be pre-printed and include at a minimum:

1. The name, rank, badge number and command of such officer.
2. The address and phone number for the Commission on Citizens' Rights and Community Relations to submit comments or complaints about the encounter.
3. The address and phone number for the department's internal affairs unit and confirmation that the subject of law enforcement activity may contact the internal affairs unit to submit a complaint about the encounter.

### **§13-25 Voluntary search guidelines**

#### **A. Policies, rules, and regulations**

The Commissioner of Police shall create and provide policies, rules, and regulations for both officers in uniform and civilian clothing, with respect to obtaining voluntary, knowing, and intelligent consent prior to the search of an individual, a vehicle, home, or personal property. Officers asking for consent to search must inform individuals that they may only conduct a search if he/she consents in accordance with this section. Except, that undercover officers shall be allowed to follow the policies of the department specific to the nature of their investigation.

#### **B. Consent Search**

An officer seeking to search an individual, their home, vehicle, or property based solely on consent to search, and not pursuant to a warrant, any other exception to the warrant requirement under applicable law, or probable cause, or in the case that the search is not incident to a lawful arrest, and/or evidence of criminal activity is not in plain view, then the officers must ask for consent to search and inform said individuals that they may only conduct a search if consent is given. Officers who are equipped with a body-worn camera must record the search on their camera and otherwise document the request for consent. Said consent shall be subject to the following procedures of this Code:

1. The officer must articulate, using plain and simple language delivered in a non-threatening manner, that the subject of the search is being asked to consent to the search voluntarily, knowingly, and intelligently, and explaining that the search will not be conducted if such individual refuses to provide the officer with the consent to search.
2. The officer shall secure consent without threats or promises of any kind being made to said individual.

3. The officer shall affirm that the individual understands the information communicated pursuant to paragraph 1 of this subdivision.
4. The officer shall refrain from conducting a search where consent has not been obtained.
5. The officer shall utilize interpretation services when seeking consent to conduct a search of an individual with limited English proficiency or his/her vehicle, home, or property, including but not limited to the use of bilingual officers and telephonic interpretation, prior to conducting a search.

### **§13-26 Creation of audio and/or video record for consent searches**

- A. An officer who seeks consent to conduct a search that is subject to the policy, rules and regulations developed and provided pursuant to §13-25 B shall:
  - 1) Create an audio and/or video record, if possible, of the information communicated and the individual's response pursuant to the guidance stated within this code, or provide pre-printed written record reflecting the information communicated pursuant to such guidance to be signed by the subject of the search. At no time shall an officer engage in a consent search in which the subject of the search is unable to communicate with the officer clearly and effectively. In any event that the subject of the search refuses to sign the card, that refusal must be documented by the officer and included in the final report.
  - 2) Document the time, location and date of search, and the apparent race/ethnicity, gender, and age of the individual who was the subject of the search, and the officer's name, command, and shield number.
  - 3) Provide the subject of the search with written instructions on how to obtain a copy of the record created pursuant to §13-26-A (1) above. Upon receiving a request for a copy of such record from the subject of the consent to search, the department shall acknowledge receipt of such request within 5 business days pursuant to Article 6 §87 of the New York State Freedom of Information Law (FOIL)-Access to Agency Records. That acknowledgement shall include a date by which the department will provide such record, provided that the acknowledgement is within 45 days of receiving the request. The acknowledgement may also include a denial of the request pursuant to applicable portions of Article 6 §87 (b) 2.
    - a. If the department is unable to provide requested copies or a denial

within 45 days due to extenuating circumstances, it shall notify the requesting individual in writing and provide such record or denial within an additional 15 days.

- 4) Notwithstanding any other provision in this section, an officer shall not be required to comply with §13-26 where:
  - a. The officer is engaged in an approved undercover activity or operation, and law enforcement activity is taken pursuant to such undercover activity or operation.
  - b. An emergency exists requiring immediate action by the officer to respond to an imminent and substantial risk of physical injury to the officer any other individual, or imminent and substantial damage to property, or to forestall the imminent escape of a suspect, or imminent destruction of evidence.
  - c. A victim requests that the recording be stopped to protect the victim's privacy rights; the officer may do so but may continue recording if the officer thinks it is unsafe or inadvisable to stop.
  - d. During searches predicated upon entrance to a public building or facility, location, event or gathering, and where individuals entrance into any such location constitutes implied consent to be searched.
  - e. Nothing in this section or in the implementation thereof shall be construed to restrict or limit law enforcement activity or proceedings regulated by the state or federal law.

#### **§13-27 Compliance with the law**

- A. The Commissioner of Police shall establish rules and regulations to enforce compliance with all sections of this law.
- B. Commencing within 30 days of the end of the quarter beginning on October 1, 2021, and within 30 days of the end of every quarter thereafter, the department shall post on its website a report of the data collected pertaining to consent searches pursuant to this law specifically the total number of consent searches conducted during the preceding quarter disaggregated by the apparent race/ethnicity, gender, and age of the individual searched; and the total number of instances where an officer sought to obtain a consent to search but did not obtain consent to search during the preceding quarter disaggregated by the apparent race/ethnicity, gender, and age of the individuals from whom such consent was sought.

- C. It shall be the duty of the Commissioner to discipline officers who violate any sections of this law in accordance with the established process and procedures of the department.

**§ 13-28 Reporting on investigative encounters**

- A. Commencing within 45 days of the passage of this law, the Commissioner of Police shall submit to the Council and the mayor, and post to the department's website a report containing the following information on investigative encounters conducted by officers for the previous quarter:
  - 1. The total number of level one investigative encounters based on objective credible reasons that escalated to a level two, three, or four encounter.
  - 2. The total number of level two investigative encounters based on founded suspicion.
  - 3. The total number of level three investigative encounters based on reasonable suspicion.
- B. The information required pursuant to §13-28 A, above shall be disaggregated by district and further disaggregated by:
  - 1. The apparent race/ethnicity, gender, and age of the individual involved.
  - 2. The number of individuals from whom an officer requested consent to search, further disaggregated by whether consent was granted or declined.
  - 3. The number of individuals arrested or issued a criminal or civil summons.
  - 4. The factors leading to the investigative encounter.
  - 5. Whether a use of force incident occurred in connection with the encounter.
  - 6. The command district for the officer involved.
- C. The information required pursuant to this section shall be stored in accordance with City's retention protocol and shall be accessible on the department's website in a manner that permits automated processing.



- D. The Commissioner of Police shall develop rules and regulations to enforce compliance with this section.
- E. Severability. If any portion of this Right to Know Law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law not deemed unconstitutional, and the remaining portions shall continue in full force and effect.

(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. 2 of 20 21 of the (County)(City)(Town)(Village) of Buffalo was duly passed by the Common Council on July 20 20 21, and was approved (not approved) (Name of Legislative Body) (repassed after disapproval) by the Mayor and was deemed duly adopted (Elective Chief Executive Officer\*) on September 2, 2021, 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.

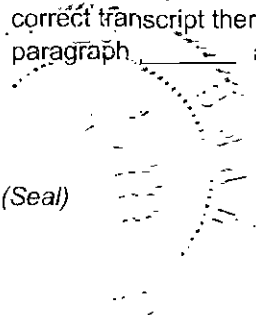
**6. (County local law concerning adoption of Charter.)**

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 \_\_\_\_\_ above.

(Seal)



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

Date: 9/15/2021