

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 Town Village
(Select one.)

of Buffalo

FILED
STATE RECORDS

NOV 04 2020

Local Law No. 3 of the year 2020 DEPARTMENT OF STATE

A local law Amending the City of Buffalo Charter in relation to the Department of Police
(Insert Title)

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 XIII, of the Charter of the City of Buffalo, adopted pursuant to law is hereby amended to read as follows:

Section 2. This local law shall be known as the "Cariol's Law; The Duty to Intervene."

Section 3. Legislative Intent and Purpose.

Whereas, police officers have a duty to protect and serve all members of the community and to uphold and abide by the law; and

Whereas, to protect the integrity of the Police Department at large and to build trust in the community, law enforcement officers must hold each other accountable to act within the bounds of the law and within strict standards regarding use of force; and

Whereas, the nation has witnessed the failure of some law enforcement officers to utilize a reasonable amount of force which has resulted in tragic deaths such as that of George Floyd in Minneapolis most recently; and

Whereas, in the circumstances of George Floyd's death, four officers were present and none of these officers intervened in the misuse of force applied by fellow officers to save the life of Mr. Floyd; and

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

Whereas within the City of Buffalo, several instances of police alleged misusing force has resulted in costly lawsuits, criminal convictions of officers and widespread mistrust of law enforcement within some communities. Whereas, in 2006, Police Officer Cariol Horne intervened to save a civilian from being harmed by a fellow police officer and had her employment terminated; Now Therefore Be it Resolve that the City of Buffalo codifies the Duty to Intervene; Cariol's law.

In light of these recent incidents of excessive use of force by police officers in America, the Common Council and the City of Buffalo codifies the "Duty to Intervene, Cariol's Law," to prevent police misconduct caused by deliberate indifference to a substantial risk of harm to persons in their custody. The duty to intervene as an affirmative policy will provide protection for police officers against retaliation from their superiors and ultimately, will protect the public from excessive use of force that can results in death, or serious bodily injuries at the hands of police officers. It is imperative that any police officer witnessing such actions be empowered to intervene.

The ability for an officer to intervene in such circumstances should take into account whether there is a realistic opportunity to prevent harm and protect the life and value of the individual at the hands of another police officer.

§ 13-21 Definitions.

- A. **Duty to intervene**—any officer present and observing another officer using force that he/she reasonably believes to be clearly beyond that which is objectively reasonable under the circumstances shall intervene to prevent the use of that unreasonable force, if and when the officer has a realistic opportunity to prevent harm.
- B. **Police Officers**—any sworn police officer of the Buffalo Police Department pursuant to Criminal Procedure Law 1.20 § 34, regardless of rank, who is responsible for preserving the safety and quality of life of the community they serve.
- C. **Use of force**—using only that amount of physical force that is objectively reasonable to achieve a legitimate law enforcement purpose, including but not limited to protecting a person from the imminent use of physical force, effecting an arrest or preventing an escape from custody. Any use of force must be consistent with Article 35 of the New York State Penal Law.
 - i. Physical force shall only be used when no other viable option is available.
 - ii. The use of force must be reasonable and can never be reckless.
 - iii. During an encounter in which force has become necessary, the level of resistance or aggression displayed by the subject may vary at different points in the encounter. The level of force used by the Officer shall be adjusted to changes in the suspect's level of resistance or aggression.
 - iv. Members are prohibited from using force against persons engaged in First Amendment protected activities or to punish persons for fleeing, resisting arrest or assaulting a member, or for any other reason.
- D. **Objectively Reasonable** – An objective standard used to judge an officer's actions.

Under this standard, a particular application of force must be judged through the perspective of a reasonable officer facing the same set of circumstances, without the benefit of 20/20 hindsight, and be based on the totality of the facts that are known to that officer at the time that the force was used.

- E. **Deadly Physical Force** - Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
- F. **Physical Injury** – Impairment of physical condition or substantial pain.
- G. **Serious Physical Injury** – Physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

§ 13-21. 1 Protections for Officers

Any on-duty police officer who observes another officer using inappropriate or unnecessary excessive force against a civilian and intervenes to protect the Constitutional and Civil Rights of the victim, shall not be unlawfully retaliated against by any employee, officer, director or agent of the City of Buffalo or the Commissioner of Police. Retaliation against officers or Good Samaritans who intervene to prevent objectively unnecessary police use of force may be grounds for termination of employment. Prohibited actions shall include, but not be limited to:

- i. Termination or layoff
- ii. Demotion of officer
- iii. Denial of overtime or promotion
- iv. Discipline of officer
- v. Denial of benefits
- vi. Failure to hire or rehire
- vii. Intimidation or harassment
- viii. Making threats
- ix. Reassignment

§ 13-21. 2 Internal Investigation.

- A. Police Officers who fail to intervene in situations where an objectively reasonable officer would determine that excessive physical force is unnecessary or is being inappropriately applied, may be held criminally liable for any Penal Law offense under which the failure to intervene satisfies all of the elements of the offense.
- B. An officer who fails to intervene while a fellow officer violates a victim's Constitutional rights may be disciplined internally for failure to intervene to stop the Constitutional violation

if he (1) had a reasonable opportunity to intervene to prevent the harm from occurring and did not, (2) the actions complained of was committed by an officer acting under color of state law' and (3) deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States.

- C. An officer who had a reasonable opportunity to intervene but did not, may be found to be in dereliction of his/her duty to intervene pursuant to section 13-21(a) and asked to reimburse the City for any civil judgments rendered by a court of law for his actions where that officer observes or has reason to know:
 - (i) That excessive force is being used;
 - (ii) That a citizen has been unjustifiably arrested; or
 - (iii) That any constitutional violation has been committed by a fellow officer.
- D. The Commissioner shall cause to be examined any allegations of an officer's failure to intervene by authorized agents appointed to carry out such investigation, it shall not be uncommon for said officer to be placed on administrative leave during the period of investigation.
- E. Whenever an officer fails to intervenes in an incident resulting in death or serious bodily injury, said incident shall be referred to the Office of the District Attorney (DA). Charges may be brought against the offending officer as well as supervisory officers who observed use of excessive force without stopping them, or who actively encouraged use of excessive force while not directly participating in it.
- F. Police officers who falsify reports of inappropriate or excessive use of force by a fellow officer may be criminally charged with filing a false report, pursuant to Penal Law § 240.60.

§ 13-21. 3 Policies Regarding Officers Found Guilty For Use of Excessive Force.

- A. Any Police Officer who is convicted of any of the criminal charges detailed in this law in a competent court of law, will be terminated upon conviction. Any police officer who is convicted of any other criminal charges stemming from failure to intervene, such as assault conviction, may be terminated. Any police officer who is found civilly liable for objectionable unreasonable use of force, outside the scope of their duty, is liable to the party aggrieved for the damages sustained by him, in addition to any other punishment or proceeding authorized by law, including but not limited to any punitive judgments awarded against the City pursuant to the theory of vicarious liability by a competent court of law.
- B. No officer, pursuant to Public Officer Law §3 shall be capable of holding a civil office who shall stand convicted of a felony defined in article 200, or 496 or § 195.20 of the Penal Law.
- C. Any police officer pursuant to Public Officer Law §3 who stands convicted of a misdemeanor defined in article 200, or 496 or section 195.00 of the Penal Law may not hold civil office for a period of five years from the date of conviction, provided that in the event such conviction is the result of a plea agreement resulting in a plea to such charge in lieu of a plea or conviction of a felony defined in section 195.20, article 200 or article 496 of the Penal Law, all parties to such agreement may agree that the period of such bar may be for a period of up to ten years from the date of conviction.

§ 13-21. 4 Policies Regarding Reporting

Any police officer that observes another officer in the act of applying excessive force to effectuate a stop, seizure, or an incidental arrest, has an affirmative duty to intervene pursuant to §13-21(a) and to make a formal report with their department head. Reporting requirements shall apply whether the use of force occurred while the offending officer was on or off-duty. All involved and witnessing officers shall prepare a Use of Force Report in accordance with the City of Buffalo Police Department Use of Force Protocol. Failure to report shall be grounds for discipline up to and including termination, if it is determined that the actions of the officer violated the public trust or breached a duty. Any final disciplinary action is subject to review pursuant to CPLR Article 75.

§ 13-21. 5 Retroactive Protection for Officers

Any police officer found to have been terminated for reporting the objectively unreasonable use of force against a civilian or intervening to stop the use of objectively unreasonable force by a fellow officer within the twenty year period preceding the adoption of this law, may have said finding reviewed by a court with competent jurisdiction.

Section 4: This Local Law shall take effect immediately upon its filing with the New York Secretary of State.

Section 5: This Local Law is not subject to mandatory referendum because the subject matter is not enumerated in the Municipal Home Law as a category requiring a referendum.

(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. 3 of 2020 of the (County)(City)(Town)(Village) of Buffalo was duly passed by the Common Council on September 29 2020, and was (approved)(not approved) (repassed after disapproval) by the Mayor and was deemed duly adopted on October 28 2020, 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____.
(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) (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.

James M. Mark

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

Date: 10/30/2020

(Seal)