

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 STEUBEN

Local Law No. THREE of the year 2014

A local law Authorizing the Seizure and Forfeiture of Property used in connection with Misdemeanor
(Insert Title)
Criminal Acts and defined by Article 220 and Article 221 of the Penal Law.

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

County City Town Village
(Select one:)

of STEUBEN

as follows:

Article I. Purpose

Section 1.1. This Legislature hereby finds and determines that activities associated with misdemeanor drug offenses pose a serious threat to the health, safety and welfare of county residents and impose an enormous burden upon the county in the provision of personnel to enforce the laws, prosecute violators and deliver services necessary to address the adverse social and health consequences of such activities.

Section 1.2. This Legislature further finds and determines that while criminal sanctions under the Penal Law are a useful means to deter misdemeanor drug activity, further local legislation is needed to achieve a reduction of said activities in the County of Steuben by removing the potential for profit, deterring the acts by placing personal resources at risk and by developing greater resources to enhance treatment and education strategies.

Section 1.3. Therefore, the purpose of this law is to provide for the seizure and forfeiture of property and funds used in connection with or constituting the proceeds of misdemeanor drug activities.

Article II. Definitions

Section 2.1. All words and phrases used in this Local Law shall have the same meaning as defined in Article 220 and Article 221 of the Penal Law and shall be specifically construed as follows:

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

Section 2.2. "Vehicle" shall mean a motor vehicle as defined in section 159 of the Vehicle and Traffic Law, an all-terrain vehicle (ATV) as defined in section 2281 of the Vehicle and Traffic Law, a snowmobile as defined in section 2221 of the Vehicle and Traffic Law and a vessel as defined by section 2250 of the Vehicle and Traffic Law when used in a navigable waterway or as defined in Section 10.00(14) of the Penal Law.

Section 2.3. "Controlled Substance" shall mean a controlled substance as defined by Article 220 of the Penal Law of the State of New York.

Section 2.4. "Marihuana" shall mean marihuana as defined and used in Article 220 and Article 221 of the Penal Law of the State of New York and as defined in section 3302 of the Public Health Law of the State of New York.

Section 2.5. "Owner" shall mean a person owning a vehicle as evidenced upon a certificate of title or a person owning property of record. For the purposes of a vehicle forfeiture, "owner" shall also be deemed to include any lienors listed on the certificate of title.

Section 2.6. "Activity" shall mean the unlawful use, possession, purchase, sale, conveyance and/or transportation of marihuana and/or controlled substances as further set forth and defined in Article 220 or Article 221 of the Penal Law or subsequent revisions or any other misdemeanor offense as defined by those articles.

Section 2.7. "Peace Officer" shall mean a person as defined by section 2.10 of the Criminal Procedure Law of the State of New York.

Section 2.8. "Police Officer" shall mean any of the persons listed in section 1.20(34) of Title A of the Criminal Procedure Law of the State of New York.

Section 2.9. "Misdemeanor" shall mean any misdemeanor offense as defined by the Penal Law of the State of New York at section 10.00(4), and arising under Article 220 or Article 221 of the Penal Law.

Section 2.10. "District Attorney" shall mean the District Attorney in and for the County of Steuben and as set forth in section 1.20(34) of the Criminal Procedure Law of the State of New York.

Section 2.11. "Monies" shall mean lawful currency of the United States, the lawful currency of any other nation, traveler's check, cashier's check, bonds, stocks, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for marihuana or a controlled substance in violation of this local law and all proceeds traceable to such an exchange and all said monies used or intended to be used to facilitate a violation of this law.

Section 2.12. "Possess" shall mean to have physical possession or to otherwise exercise dominion or control over tangible property or as defined in section 10.00(8) of the Penal Law.

Section 2.13. "Person" means a human being, and, where appropriate, a public or private corporation, an unincorporated association or a partnership or as defined by section 10.00(7) of the Penal Law.

Section 2.14. "Police Agency" shall mean the New York State Police, New York State Environmental Conservation Police, New York State Park Police, Steuben County Sheriff's Office, and any other agency or department employing peace officers or police officers within the County of Steuben.

Section 2.15. "Common Carrier" shall mean any common carrier as defined by 49 U.S.C. 10102 or as defined by section 2 et seq. of the Transportation Law of the State of New York.

Section 2.16. All words used in this local law whether or not specifically defined herein at Article II must be construed according to the fair import of their terms to promote justice and effect the objects of this law.

Article III. Conduct

Section 3. The provisions of Article IV herein shall be applicable upon the establishing of prohibited conduct as set forth under Articles 220 and 221 of the New York State Penal Law where such conduct comprises a misdemeanor thereunder. The establishing of such conduct may be sustained by, but not limited to, a certificate of conviction therefore, other court record establishing such prohibited conduct or upon the written stipulation of a party to such prohibited conduct of that party.

Article IV. Seizure and Delivery

Section 4.1. The following property shall be subject to forfeiture to the County of Steuben and no property right shall exist in them: Any vehicle which has been or is being used in violation of Article III and any money as a result of or in furtherance of the prohibited conduct set forth in Article III. Said property may be seized by any peace officer, acting pursuant to his special duties, or police officer, and forfeited as hereinafter provided in this local law. Seized property is subject to forfeiture if and only if used or possessed in connection with acts or conduct which would constitute a misdemeanor under Article 220 or Article 221 of the Penal Law.

Section 4.2. The seized property shall be promptly delivered by the officer having made the seizure to the care and custody of the District Attorney together with a report of all the facts and circumstances of the seizure and the underlying misdemeanor offense(s).

Article V. Civil Proceedings

Section 5. It shall be the duty of the District Attorney to inquire into the facts and circumstances of the seizure as so reported to the District Attorney and, if it appears probable that a forfeiture has been incurred by reason of a violation of this local law, for the determination of whether the institution of proceedings in the Supreme Court of the State of New York is necessary, to cause the proper proceedings to be commenced and prosecuted not later than twenty (20) days after written demand by a person claiming ownership thereof, to declare such forfeiture, unless, upon inquiry and examination, the District Attorney decides that such proceedings cannot probably be sustained or that the ends of public justice do not require that they should be instituted or prosecuted, in which case the District Attorney shall cause such seized property to be returned to the owner thereof. The proceedings instituted under this local law shall conform, as close as practicable, to the procedure for attachment under the Civil Practice Law and Rules, and except as modified by this local law, including by not limited to Article 13-A of the CPLR.

Article VI. Notice

Section 6. Notice of the institution of the forfeiture proceedings shall be served on the owner of the seized property in accordance with the notice and service provisions of the New York State Civil Practice Law and Rules.

Article VII. Affirmative Defenses

Section 7. Forfeiture be adjudged except where the owner establishes by preponderance of the evidence that:

(a) seized property was used or possessed in violation of Article III by any person other than an owner thereof, while such seized property was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or the criminal laws of any state or territory; or

(b) a seized vehicle was used by a person as a common carrier in the transaction of business as a common carrier unless it appears that the owner or other person in charge of said vehicle was a consenting party or privy to a violation of this local law or Article 220 or Article 221 of the Penal Law; or

(c) a vehicle was seized by reason of any act or omission established by the owner of a vehicle to have been committed or omitted by any person other than such owner while said vehicle was unlawfully in the

possession of a person other than the owner in violation of the criminal laws of the United States, or of any State;
or

(d) to the extent of an interest of the owner only, property was seized by reason of any act or omission established by that owner to have been committed or omitted without the knowledge of the owner.

Article VIII. Distribution

Section 8.1. The District Attorney, having custody of the seized property, after such judicial determination of forfeiture, shall have the discretion, where the property is a vehicle, to either retain such seized vehicle for the official use of the District Attorney's Office or the seizing police agency, or, by a public notice of at least five days, sell such forfeited vehicle at public sale; provided, however, that where such vehicle is subject to a perfected lien, such lien must be satisfied for such vehicle to be retained. The net proceeds of any such forfeiture under this local law, after deduction of the lawful expenses incurred, shall be collected by the District Attorney and deposited with the Steuben County Commissioner of Finance, who shall record them in the appropriate trust account(s) and who shall forthwith distribute directly from said account(s) as follows:

(a) Monies shall first go pay any restitution, as that term is defined in the Penal Law of the State of New York, owed in conjunction with the criminal case;

(b) fifty percent (50%) of all remaining monies realized through forfeiture to the seizing police agency, to be disbursed quarterly, in satisfaction of actual costs incurred for protecting, maintaining, and delivering the seized property to the office of the District Attorney; said monies to be deposited in the agency's general forfeiture account in accordance with said agency's routine accounting procedures. In the event seizure resulted from a collaborative effort of law enforcement, then such 50% shall be distributed under the terms of agreement, between the several collaborating law enforcement agencies, and such funds to be made payable to the municipal official authorized to receive such funds, and

(b) the remaining fifty percent (50%) of all monies realized through forfeiture as retained by the Commissioner of Finance shall be directed into an account to be designated for DISTRICT ATTORNEY REVENUE ACCOUNT by the Steuben County Commissioner of Finance to be utilized exclusively for prosecution/prevention of drug crimes.

Section 8.2. The Steuben County Commissioner of Finance and the Steuben County Auditor shall monitor usage of all monies paid directly to the office of the District Attorney under Section 8.1(b) of this local law and these monies or proceeds shall be accounted for and reported through the County of Steuben's official audit and accounting procedures.

Article IX. Restoration

Section 9. Whenever a person interested in any property which is seized and declared forfeited under the provisions of this local law files with a Justice of the Supreme Court a petition for the recovery of such forfeited property, the Justice of the Supreme Court may restore said forfeited property, upon such terms and conditions as the Supreme Court deems reasonable and proper, if the petitioner establishes either of the affirmative defenses set forth in Article VII of this local law and that the petitioner was without personal or actual knowledge of the forfeiture proceeding. If the petition is filed after the sale of the forfeited property, any judgment in favor of the petitioner shall be limited to the net proceeds of such sale, after deduction of the lawful expenses and costs incurred by the District Attorney and police agency.

Article X. Statute of Limitations

Section 10. Notwithstanding any other general provision of law, no suit or action under this local law for wrongful forfeiture shall be instituted unless such suit or action is commenced within the time frames set forth under Article 78 of the Civil Practice Law and Rules.

Article XI. Severability

Section 11. If any part of this local law shall be found invalid by a court of competent jurisdiction, such invalidity shall apply only to such part, and the remainder of this local law shall remain valid and effective.

Article XII. Effective Date

Section 12. This local law shall take effect upon its filing, pursuant to section 27 of the Municipal Home Rule Law, with the Secretary of State.

(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. Three of 2014 of the (County)(City)(Town)(Village) of STEUBEN was duly passed by the LEGISLATURE on 11/24 2014, in accordance with the applicable 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. _____ 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 _____ and was deemed duly adopted on _____ 20____, 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) (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.

~~**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 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 1 above.

Brenda K. Mori

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

Date: 12/24/14

(Seal)