

LOCAL LAW NO. 8 OF 2018
COUNTY OF OTSEGO, NEW YORK

**A LOCAL LAW DECLARING THE OPIOID EPIDEMIC AND ITS EFFECTS ON THE
COUNTY OF OTSEGO A PUBLIC NUISANCE, AND ESTABLISHING A COST RECOVERY
PROCEDURE FOR THE COUNTY'S EXPENDITURES INCURRED IN PROVIDING SERVICES
RELATED TO THE OPIOID EPIDEMIC**

BE IT ENACTED, by the Board of Representatives of the County of Otsego as follows:

Section 1. Purpose and intent.

The opioid epidemic is sweeping the country. Indeed, addiction to and abuse of opioids is one of the greatest challenges facing the County of Otsego, New York (the "County"). A cause of this increasing crisis is the overabundance of prescription opioids. Vast amounts of prescription opioids were sold, distributed and prescribed in the County over the past several years, a practice that continues today. The selling, distributing, and prescribing of large amounts of opioids in our community has created a public health and safety hazard affecting the residents of the County. This crisis has devastated families, wreaked havoc on our economy, and produced a generation of narcotic dependence. As a result of the opioid epidemic, costs related to healthcare, family and social services, criminal justice, addiction and rehabilitation, emergency services and many other areas have significantly increased. Many of these costs are paid by the County.

The purpose and intent of this Local Law is to allow the County to recover these costs, despite the existence of the common-law municipal cost recovery rule (a.k.a. free public services doctrine) and declare the opioid epidemic and its effects on the County a public nuisance. Specifically, the County provides services related to the opioid epidemic, which are funded by tax revenues. This statute clarifies that reimbursement may be sought for the costs of providing such services, whenever practicable, from the responsible party. To accomplish this, the County establishes this cost recovery procedure and declares the opioid epidemic and its effects on the County a public nuisance.

Section 2. Definitions.

“Costs” means all expenditures related to the opioid epidemic that directly or indirectly arise from the County’s response to a responsible party’s action or inaction.

“Responsible party” means any person or corporation whose negligent, intentional, or otherwise wrongful conduct causes the incident resulting in the County incurring costs or who is found liable or made responsible by a court for the costs incurred by the County in the form of damages, regardless of the cause of action.

Section 3. Governmental function cost recovery.

The County may recover the costs of governmental functions related to opioids marketed, sold, manufactured, dispensed, prescribed, and/or distributed by the responsible party. If a responsible party fails to pay the costs demanded, the County may initiate and recover costs through administrative, civil, and/or criminal action against the responsible party. In any of these cases, the County may recover attorney’s fees, interest, and any other payment or type of damages the court deems proper.

Section 4. Effect of criminal or civil proceedings on governmental function cost recovery.

The initiation of administrative or civil proceedings for governmental function cost recovery does not bar the criminal prosecution of a responsible party for any associated violation. Similarly, criminal prosecution does not bar civil collection of costs for the violation giving rise to the criminal prosecution.

Section 5. Public nuisance.

The County hereby finds and declares the following:

- 1) The addiction to and abuse of opioids is one of the greatest challenges facing the County.
- 2) A cause of this increasing crisis is the overabundance of opioids. Vast amounts of prescription opioid pain pills were sold, distributed and

- prescribed in the County over the past several years which practices continue today;
- 3) There is evidence showing that approximately four in five heroin users began their addiction by first using and then misusing prescription pain medications containing opioids;
 - 4) The selling, distributing, and prescribing of large amounts of opioid pills in the County has created a public health and safety hazard affecting the residents of the County, resulting in devastation to County families, a negative effect on the County's economy, wasted public resources, and a generation of narcotic dependence;
 - 5) The selling, distributing, and prescribing of prescription opioid pain pills is a hazard to public health and safety, which has created a public nuisance to the citizens of the County, and said nuisance remains unabated;
 - 6) In addition to all other powers and duties now conferred by law upon the County, the County is authorized to enact ordinances, issue orders, and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything that the Otsego County Board of Representatives determines to be a public nuisance;
 - 7) The manufacturers of prescription opioids and those in the chain of distribution have wrongfully abused the privilege of selling and/or providing medication to our residents and must be held accountable; and
 - 8) It is the duty of the County to vindicate the rights of the citizens of the County and take action to abate this public nuisance.

Section 6. Retroactive application.

This Local Law shall apply retroactively.

Section 7. Severability.

If any clause, sentence, paragraph, subdivision, section or part of this local law or the application thereof to any person, individual, corporation, firm, partnership, or business shall be adjudged by any Court of competent jurisdiction to be invalid or unconstitutional, such adjudication 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 Local Law, or in its specific application.

Section 8. Effective Date.

This local law shall become effective as provided in Municipal Home Rule Law section 27.

This local law is offered by the Administration Committee.