

June 1, 2015

Finance Committee: 4-27-2015

RESOLUTION NO. 159-2015

**ADOPTING PROPOSED LOCAL LAW E (NO.   ) FOR THE YEAR 2015, "A LOCAL LAW DEFINING THE TERM 'PROPER CAUSE' AS FOUND IN PENAL LAW §400.00(2)(F) REGARDING LICENSES TO CARRY, POSSESS, REPAIR, AND DISPOSE OF FIREARMS"**

By Mr. Hooper, Chair, Finance Committee

**BE IT ENACTED** by the Board of Legislators of the County of St. Lawrence as follows:

Section 1. The New York State Court of Appeals has determined that Penal Law §400.00 et. al. is the "exclusive statutory mechanism for the licensing of firearms in New York State".

Pursuant to the Penal Law §400.00(2), "A license for a pistol or revolver, other than an assault weapon or a disguised gun, shall be issued to (a) have and possess in his dwelling by a householder; (b) have and possess in his place of business by a merchant or storekeeper; (c) have and carry concealed while so employed by a messenger employed by a banking institution or express company; (d) have and carry concealed by a justice of the supreme court in the first or second judicial departments, or by a judge of the New York city civil court or the New York city criminal court; (e) have and carry concealed while so employed by a regular employee of an institution of the state, or of any county, city, town or village, under control of a commissioner of correction of the city or any warden, superintendent or head keeper of any state prison, penitentiary, workhouse, county jail or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases, provided that application is made therefor by such commissioner, warden, superintendent or head keeper; (f) have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof".

Section 2. This Local Law specifically renounces and rejects the definition of 'proper cause' found within the decisions of the *Matter of Klenosky v. New York City Police Dept.*, 75 A.D.2d 793, 428 N.Y.S.2d 256 (1st Dept., 1980), *aff'd for reasons stated in the memorandum at the Appellate Division* 53 N.Y.2d 685, 439 N.Y.S.2d 108, 421 N.E.2d 503 (1981); *Bando v. Sullivan*, 290 A.D.2d 691735 N.Y.S.2d 660 (3<sup>rd</sup> Dept., 2002); *Kachalsky v. Cacace* (District - 10 Civ 05413, 2nd Circuit - 11-3642)(2015) and their progeny as being an arbitrary and capricious restriction of an individual's right to bear arms guaranteed under the 2<sup>nd</sup> Amendment of the United States Constitution.

Section 3. It is hereby declared that 'proper cause', as that term is found in the issuance of pistol licenses wherein the applicant has sought to "have and carry concealed, without regard to employment or place of possession, by any person" pursuant New York State Penal Law §400.00(2)(f) shall be defined as "any legitimate reason, a circumstance or combination of circumstances justifying the granting of a privilege."

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Section 4. This law shall be null and void on the day that statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of St. Lawrence. The County Legislature may determine by resolution whether or not identical or substantially similar statewide legislation or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section. In no event shall the recited actions of this section prevent the continued prosecution of matters pending judicial determination at the time of such action(s) take place.

Section 5. If any provision of this law is held invalid, such invalidity shall not affect the remaining provisions of the law which shall remain effective absent the invalid provision, and to this end, the provisions of the law are declared to be severable.

Section 6. This law shall apply to all actions occurring on or after the effective date.

Section 7. This local law shall take effect immediately upon the date it is files in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule of the State of New York.

STATE OF NEW YORK                    )  
  ) ss:  
COUNTY OF ST. LAWRENCE         )

I, Kelly S. Pearson, Deputy Clerk of the St. Lawrence County Board of Legislators, **DO HEREBY CERTIFY** that I have compared this Resolution No. 159-2015 entitled "Adopting Proposed Local Law E (No.   ) for the Year 2015, "A Local Law Defining the Term 'Proper Cause' as Found in Penal Law §400.00(2)(F) Regarding Licenses to Carry, Possess, Repair, and Dispose of Firearms", Adopted June 1, 2015, with the original record in this office and that the same is a correct transcript thereof and of the whole of said original record.

Kelly S. Pearson  
Kelly S. Pearson, Deputy Clerk  
St. Lawrence County Board of Legislators  
June 2, 2015