

DRAFT ORDINANCE

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 18, ARTICLE VII, "WEAPONS," OF THE TOWN CODE TO UPDATE THE TOWN'S CONCEALED CARRY FIREARM LICENSING ORDINANCE AND PROHIBIT THE CARRY OF FIREARMS IN SENSITIVE PLACES

WHEREAS, the Town of Los Gatos regulates weapons in Chapter 18, Article VII, of the Town Code;

WHEREAS, state Penal Code Section 26155 authorizes Chiefs of Police to issue concealed carry firearm licenses;

WHEREAS, Town Code Section 18.70.025 addresses the issuance of concealed carry firearm licenses;

WHEREAS, the 2022 Supreme Court decision of *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 ("Bruen") held that a "good cause" requirement for a concealed carry firearm license is unconstitutional;

WHEREAS, the *Bruen* decision also held that municipalities can prohibit the carrying of concealed weapons in "sensitive places;" and

WHEREAS, the Town wishes to update Chapter 18, Article VII, of the Town Code to update its concealed carry firearm license procedures to remove the "good cause" requirement, use the same terminology as the state Penal Code, and add a prohibition on firearms, including concealed carry firearms, in "sensitive places;"

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Los Gatos as follows:

SECTION I. Legislative Findings:

- A. The Town of Los Gatos has a compelling interest in protecting the health and safety of the public and the orderly functioning of government within its bounds.
- B. The incidence of firearm-related fatalities and injuries has reached alarming and unacceptable proportions at the national, state, and local level, as described in a report by the Santa Clara County Department of Public Health, "Cost of Gun Violence in Santa Clara County" (Aug. 12, 2022), which notes that the age-adjusted firearm death rate in

Santa Clara County was 4.8 people per 100,000 in 2020, the highest rate in the past decade.

- C. According to the Gun Violence Archive (<https://www.gunviolencearchive.org>), California experienced 369 mass shootings (defined as an incident that kills or injures four or more people) between 2014 and January 2023. In Santa Clara County, mass shooting tragedies have included May 26, 2021, at the VTA railyard in San Jose (10 dead including the shooter); July 28, 2019, at the Gilroy Garlic festival (4 dead including the shooter, 17 wounded); Oct. 5, 2011, at the Lehigh Cement Plant in Cupertino (3 dead, 7 wounded); and Feb 16, 1988 at ESL Inc. in Sunnyvale (7 dead, 4 wounded).
- D. Previously, California law required applicants for permits to carry a concealed weapon to demonstrate “good cause” for the issuance of the license. The United States Supreme Court recently held, in *N.Y. State Rifle & Pistol Ass’n v. Bruen* (2022), 142 S. Ct. 2111, that such “good cause” requirements are unconstitutional under the Second and Fourteenth Amendments. This development in the law will likely result an increase in concealed carry permits issued in California.
- E. The U.S. Supreme Court has said that laws prohibiting the carrying of firearms in certain “sensitive places,” including “schools and government buildings,” and “legislative assemblies, polling places, and courthouses,” may be consistent with the Second Amendment. (*N.Y. State Rifle & Pistol Ass’n v. Bruen* (2022), 142 S. Ct. 2111; *D.C. v. Heller* (2008), 554 U.S. 570.)
- F. Through this Ordinance, the City Council desires to prohibit the carry of firearms in sensitive places, including by those who are licensed to carry a concealed weapon, consistent with the Supreme Court’s guidance in *N.Y. State Rifle & Pistol Ass’n v. Bruen*.

SECTION II. Article VII, “Weapons,” of Chapter 18, “Offences and Miscellaneous Provisions,” of the Town Code is amended to add section 18.70.005, “Definitions,” to read as follows with underlining (underlining) indicating new text:

Sec. 18.70.005. Definitions.

For the purpose of this Chapter, the following words and phrases have the meaning ascribed to them, unless otherwise noted:

“Ammunition” means any ammunition as defined in California Penal Code Section 16150, or any successor legislation.

“Concealed firearm” has the meaning set forth in Section 25400 of the California Penal Code or any successor legislation.

“Firearm”:

(a) Means any gun, pistol, revolver, rifle, or any devise, designated or modified to be used as a weapon, from which is expelled though a barrel a projectile by the force of an explosion of other form of combustion.

(b) Includes:

1. A firearm, as defined in California Penal Code section 16520 or any successor legislation.
2. A BB device, as defined in California Penal Code section 16250 or any successor legislation.
3. An imitation firearm, as defined in California Penal Code section 16700(a) or any successor legislation.

"Licensee" means a person granted a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person pursuant to Sections 26150, 26155, or 26170 of the California Penal Code.

"Sale" or "Sell":

(a) Means any transaction, with or without the exchange of consideration, which:

1. Transfers ownership, title, possession, or control of a firearm, or ammunition, or both; or
2. Gives, loans, leases, or delivers a firearm, or ammunition, or both.

(b) Includes the act of placing a order for any of the aforementioned transfers.

"School" means "school zone" as defined in Penal Code Section 626.9 as well as institutions that provide preschool, post-secondary, technical, or trade or vocational education, and includes all athletic facilities, offices, cafeterias and eating establishments, health care facilities, research facilities, parking lots, and shared rooms and common areas of dormitories thereof.

"School" does not include a private residence at which education is provided for children who are all related to one another by blood, marriage, or adoption.

"Sensitive Place" means any of the following places:

- (a) Town Property;
- (b) Any polling place where voting is occurring;
- (c) Any School;
- (d) A bus, train, paratransit, or other form of transportation paid for in whole or in part with public funds where the public agency that operates the transit system has duly authorized the Town to enforce this prohibition; and
- (e) A church, synagogue, mosque or other place of worship, including in any parking area immediately adjacent threats. Unless the operation of the place of worship clearly and conspicuously posts a sign at the entrance of the building or on the premises indication that license holders are permitted to carry firearms on the property.

"Town Property" means Town government buildings, including but not limited to, the Civic Center Complex, the Police Operations Building, the Parks and Public Works Department offices, and the Town Library.

"Unloaded":

(a) Means:

1. No ammunition is in the firearm's chamber or cylinder; and
2. No ammunition, clip, tube, speed loader, or magazine that is compatible with the firearm and that contains ammunition is on the person who is carrying the firearm.

- (b) Does not include a muzzle-loading firearm that is capped or primed and has powder charge and ball, shot, or projectile in the barrel or cylinder.

SECTION III. Section 18.70.025, “Permit to carry, shoot and discharge” of Article VII, “Weapons,” of Chapter 18, of the Town Code is amended to read as follows with underlining (underlining) indicating new text and strikeouts (~~strikeouts~~) indicating deleted text:

Sec. 18.70.025. ~~Permit to carry, shoot and discharge~~ License to carry pistol, revolver, or other firearm capable of being concealed upon the person.

- (a) ~~The Chief of Police may issue a written permit to carry, shoot and discharge a weapon within the Town upon proof that the applicant for such permit is a person of good moral character and that good cause exists for the issuance of such permit as provided in this section.~~ In accordance with Penal Code Section 26155 and the concealed carry firearm license procedures implemented by the Chief of Police, a person may apply for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person.
- (b) The Chief of Police may issue a concealed carry firearm license to that person upon proof of all of the following:

~~(b)~~

1. The applicant is of good moral character.
2. The applicant is a resident of the Town of Los Gatos.
3. The applicant has completed a course of training as described in Penal Code Section 26165.
4. The application complies with state law, the Town Code, and the Town’s concealed carry firearm license procedure adopted by the Chief of Police. ~~For the purposes of this section, “weapon” is defined as any shotgun, rifle, pistol or air rifle.~~

- ~~(b)(c)~~ Application for such permit shall be in writing upon forms furnished by the Town, signed by the applicant and filed in the office of the Chief of Police, which application shall state the name, occupation, residence and business address of the applicant; birth date, height, weight, color of eyes and hair; and the reason for desiring such permit. No permit shall issue to any minor unless a parent or guardian of such minor also signs the application therefor. License applications shall be submitted electronically using the Town’s on-line ~~form~~ concealed carry license application portal.

- ~~(c)(d)~~ The Chief of Police or designee shall review the completed application and corresponding documents to determine whether it satisfies the requirements set forth in state law, the Town Code, and the Town’s concealed carry firearm license procedure.

~~Any such permit issued shall set forth the foregoing data and shall in addition contain a description of the weapon subject to such permit, giving the name of the manufacturer,~~

~~the serial number and caliber and gauge, and shall set forth the date issued and expiration date, which shall in no event be more than twelve (12) months from the date issued.~~

~~(d)(e)~~ Any such license issued shall contain a description of the firearm subject to such license, giving the name of the manufacturer, the serial number and caliber and gauge, and shall set forth the date issued and expiration date, which shall in no event ~~be more exceed then~~ two years from the date ~~issued~~ of issuance. ~~Before issuing any such permit, the Chief of Police shall examine the applicant; shall determine whether or not the applicant is of suitable age and discretion and has had sufficient training in the care and use of the weapon; and that in the opinion of the Chief of Police the applicant can handle, shoot and discharge the weapon in a manner not to endanger the applicant or any person or property.~~

~~(e)(f)~~ In accordance with Penal Code Section 26200, the license may contain restrictions limiting the use of the concealed carry firearm. ~~The permit, if issued, may contain restrictions limiting the use of such weapon to certain hours of the day and to particular areas or locations within the Town. The permit may limit the use of the weapon to approved shooting ranges, when in the opinion of the Chief of Police the shooting range is safe and the shooting or discharging of the weapon will not disturb the peace and quiet of the neighborhood.~~

~~(f)(g)~~ If the Chief of Police issues a permit license to the applicant, a duplicate original copy thereof shall be filed and remain in the office of the Chief of Police.

~~(g)(h)~~ The Chief of Police may ~~in the Chief of Police's discretion refuse to issue any such permit~~ deny any application that does not comply with state law, Town Code, or the Town's concealed carry firearm license procedure or revoke any license if the license holder does not comply with state or local law, the Town's concealed carry firearm license procedure, or a license condition. ~~permit previously issued~~ In such, ~~in which~~ event, the Chief of Police shall notify such applicant or permittee of the decision in person or by mail at the address shown on the application on file in the office of the Chief of Police. Notice shall be deemed to have been given on the day the notice is mailed or personal notice given.

~~(i)~~ ~~Any applicant or permittee or parent or guardian of any minor applicant or minor permittee aggrieved by any such decision of the Chief of Police may file an original and four (4) copies of the written notice of appeal from such decision with the Town Clerk in the office of the Town Clerk within ten (10) days from the date of such decision. The notice of appeal shall contain the name and mailing address of the appellant and shall contain a statement of facts upon which the appellant contends the Chief of Police abused the Chief's discretion. The Town Clerk shall place the matter of the appeal on the agenda for the next regular meeting of the Town Council and shall cause endorsed filed copies of the notice of appeal to be delivered to the appellant, the Chief of Police, Town Manager and Town Attorney. The Town Council shall at its next meeting set a time and place for hearing such appeal and cause notice thereof to be given to the appellant, Chief of Police, Town Manager and Town Attorney. Upon hearing the appeal, the Town Council shall consider the record and such additional evidence as may be offered and may affirm, modify or reverse the action taken by the Chief of Police. In the event no notice of appeal is filed in~~

~~the office of the Town Clerk within ten (10) days after receiving actual or mailed notice of the decision of the Chief of Police, the decision of the Chief of Police shall be final and conclusive.~~

Cross reference(s)—Licenses and miscellaneous business regulations, Ch. 14.

SECTION IV. Section 18.70.030, “Sale to, possession, use by minors,” of Article VII, “Weapons,” of Chapter 18, of the Town Code is amended as follows with strikeouts (strikeouts) indicating deleted text:

Sec. 18.70.030. Sale to, possession, use by minors.

~~No person shall sell to any minor in the Town under the age of sixteen (16) years, and no person shall sell or give to any minor in the Town under the age of eighteen (18) years, without written consent of the minor's parent or guardian, any rifle, gun, pistol, revolver, air rifle, B-B gun, or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected. No such minor shall use or possess any rifle, gun, pistol, revolver, air rifle, B-B gun or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected. The provisions of this section shall not apply to the possession of such firearms or other instruments by such minors in carrying or transporting such firearms or other such instrument, unloaded or broken down into, through or out of the Town or in bona fide shooting galleries, gun clubs or organizations or educational institutions authorized to give military instruction, while such firearms or other instrument are being used as a part of such instruction, nor to the possession of unloaded firearms, air rifles or other such instruments by any such minor as an employee of a merchant, when such possession is in the usual course of the minor's employment. The provisions of this section shall not apply to cap pistols, dart guns or other similar toys.~~

SECTION V. Section 18.70.035, “Sling shots; possession prohibited,” of Article VII, “Weapons,” of Chapter 18, of the Town Code is amended as follows with strikeouts (strikeouts) indicating deleted text:

Sec. 18.70.035. Sling shots; possession prohibited.

~~No person shall make use of or wear or carry or have in possession any sling shot, rubber sling or other instrument or contrivance by means of which shots or other missiles of any kind or description are or made to be hurled or projected.~~

~~(Code 1968, § 17-35)~~

SECTION VI. Article VII, “Weapons,” of Chapter 18, “Offences and Miscellaneous Provisions,” of the Town Code is amended to add section 18.70.040, “Prohibited acts – Ban on possession and sale of firearms,” to read as follows with underlining (underlining) indicating new text:

Sec. 18.70.040. Prohibited acts – Ban on possession and sale of firearms.

No person shall, including those persons holding a concealed carry weapons license:

(a) Bring onto or possess at a sensitive place:

1. A firearm, loaded or unloaded.
 2. Ammunition for a firearm.
- (b) Sell on Town property:
1. A firearm, loaded or unloaded.
 2. Ammunition for a firearm.

SECTION VII. Article VII, “Weapons,” of Chapter 18, “Offences and Miscellaneous Provisions,” of the Town Code is amended to add section section 18.70.050, “Exceptions – Ban on possession,” to read as follows with underlining (underlining) indicating new text:

Sec. 18.70.050. Exceptions – Ban on possession.

Section 18.70.040 does not apply to the following:

- (a) A federal, state, or local law enforcement officer when such person is authorized to carry a concealed firearm or a loaded firearm under state law or under 18 U.S.C. Section 926B or 926C or any successor legislation;
- (b) An honorably retired officer or agent of a law enforcement agency, when authorized to carry a concealed or loaded firearm under State law;
- (c) A security guard or messenger of a financial institution, a guard of a contract carrier operating an armored vehicle, a licensed private investigator, a patrol operator, an alarm company operator, or security guard, when such persons are authorized by applicable state or federal law to carry a firearm and when such persons are engaged in the exercise of their official duties;
- (d) An active member of the military forces of the State or of the United States when engaged in the performance of lawful duties and orders;
- (e) Any person bringing an unloaded firearm onto Town property in order to exchange or transfer or relinquish it to the Police Department, in compliance with any Police Department operated or sponsored program to purchase, exchange, or otherwise obtain voluntary relinquishment of firearms;
- (f) A person delivering unloaded firearms as authorized by state or federal law, to or from law enforcement;
- (g) A person lawfully possessing an unloaded firearm in the locked trunk or inside a locked container in a motor vehicle;
- (h) A person who is lawfully at and using a firearms target range in accordance with its rules and applicable law.
- (i) A patrol special police officer, animal control officer, or zookeeper when authorized by applicable California or federal law to carry a loaded firearm and when engaged in exercise of official duties on city properties.
- (j) An officer authorized to transport prisoners under applicable California or federal law.
- (k) An authorized participant in a motion picture, television, film or video production, or musical theatrical production when the participant lawfully uses an unloaded firearm as a part of that production.

(l) A hunter with a valid hunting license when going to or returning from a legal hunting expedition; provided, however, that when transiting through any area where firearms are prohibited; any firearm is safely stored in a locked container or otherwise secured using a firearm safety device as defined by California Penal Code Section 16540 or any successor legislation;

(m) A licensee in their residence or place of business in accordance with Section 12026 of the California Penal Code and any successor legislation.

SECTION VIII. Article VII, “Weapons,” of Chapter 18, “Offences and Miscellaneous Provisions,” of the Town Code is amended to add section 18.70.060, “Exceptions – Ban on sale,” to read as follows with underlining (underlining) indicating new text:

Sec. 18.70.060. Exceptions – Ban on sale.

Section 18.70.040 does not apply to the purchase of sale of a firearm, or ammunition, or both, by a federal, state, or local law enforcement agency or by any other federal, state, or local government entity.

SECTION IX. Article VII, “Weapons,” of Chapter 18, “Offences and Miscellaneous Provisions,” of the Town Code is amended to add section 18.70.070, “Sale to, possession, use by minors,” to read as follows with underlining (underlining) indicating new text:

Sec. 18.70.070. Sale to, possession, use by minors.

No person shall sell to any minor in the Town under the age of sixteen (16) years, and no person shall sell or give to any minor in the Town under the age of eighteen (18) years, without written consent of the minor's parent or guardian, any rifle, gun, pistol, revolver, air rifle, B-B gun, or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected. No such minor shall use or possess any rifle, gun, pistol, revolver, air rifle, B-B gun or other similar instrument from or by means of which any bullet, shot or other missile of any kind may be projected. The provisions of this section shall not apply to the possession of such firearms or other instruments by such minors in carrying or transporting such firearms or other such instrument, unloaded or broken down into, through or out of the Town or in bona fide shooting galleries, gun clubs or organizations or educational institutions authorized to give military instruction, while such firearms or other instrument are being used as a part of such instruction, nor to the possession of unloaded firearms, air rifles or other such instruments by any such minor as an employee of a merchant, when such possession is in the usual course of the minor's employment. The provisions of this section shall not apply to cap pistols, dart guns or other similar toys.

SECTION X. Article VII, “Weapons,” of Chapter 18, “Offences and Miscellaneous Provisions,” of the Town Code is amended to add section 18.70.035, “Sling shots; possession prohibited,” to read as follows with underlining (underlining) indicating new text:

Sec. 18.70.080. Sling shots; possession prohibited.

No person shall make use of or wear or carry or have in possession any sling shot, rubber sling or other instrument or contrivance by means of which shots or other missiles of any kind or description are or made to be hurled or projected.

SECTION XI. Severability.

In the event that a court of competent jurisdiction holds any Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this Section and shall not affect the validity of the remaining portions of this Section. The Town hereby declares that it would have adopted each Section, subsection, paragraph, sentence, clause, or phrase in this Section irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases in this Section might be declared unconstitutional, preempted, or otherwise invalid.

SECTION XII. CEQA.

Adopting this Ordinance is not a project subject to CEQA because it can be seen with certainty that it will not impact the environment (CEQA Guidelines Section 15378).

SECTION XIII. Publication.

The Town Council hereby directs the Town Clerk to cause this Ordinance or a summary thereof to be published or posted in accordance with Section 36933 of the Government Code of the State of California.

SECTION XIV. Effective Date.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the _____, 2023, and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the _____, 2023. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____