



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Meeting Agenda City Council

**THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY AS
THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR
AGENCY**

Monday, September 27, 2021

6:00 PM

Via Video Conference

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PLEASE TAKE NOTICE

Due to state and county health orders and to minimize the spread of COVID-19, City Councilmembers and staff will be participating in this meeting via video conference. The Governor's executive Orders N-25-20, N-29-20, N-08-21 and N-15-21 suspend certain requirements of the Brown Act and allow the meeting to be held virtually.

The meeting will be live-streamed on the City's website at <https://city.fortbragg.com/> and on Channel 3. Public Comment regarding matters on the agenda may be made by joining the Zoom video conference and using the Raise Hand feature when the Mayor or Acting Mayor calls for public comment. Any written public comments received after agenda publication will be forwarded to the Councilmembers as soon as possible after receipt and will be available for inspection at City Hall, 416 N. Franklin Street, Fort Bragg, California. All comments will become a permanent part of the agenda packet on the day after the meeting or as soon thereafter as possible, except those written comments that are in an unrecognized file type or too large to be uploaded to the City's agenda software application. Public comments may be submitted to City Clerk June Lemos at jlemos@fortbragg.com.

ZOOM WEBINAR INVITATION

*You are invited to a Zoom webinar.
When: Sep 27, 2021 06:00 PM Pacific Time (US and Canada)
Topic: City Council Meeting*

*Please click the link below to join the webinar:
<https://us06web.zoom.us/j/88637162629>
Or Telephone:
US: +1 720 707 2699 or +1 253 215 8782 (*6 mute/unmute, *9 raise hand)
Webinar ID: 886 3716 2629*

TO SPEAK DURING PUBLIC COMMENT PORTIONS OF THE AGENDA VIA ZOOM, PLEASE JOIN THE MEETING AND USE THE RAISE HAND FEATURE WHEN THE MAYOR OR ACTING MAYOR CALLS FOR PUBLIC COMMENT ON THE ITEM YOU WISH TO ADDRESS.

AGENDA REVIEW

1. MAYOR'S RECOGNITIONS AND ANNOUNCEMENTS

- 1A. [21-491](#) Presentation of Proclamation Recognizing the Week of September 26, 2021 as Banned Books Week

Attachments: [16 - Banned Books Week](#)

- 1B. [21-511](#) Presentation of Proclamation Recognizing September 15 - October 15 as Latino Heritage Month

Attachments: [17-Latino Heritage Month](#)

2. PUBLIC COMMENTS ON: (1) NON-AGENDA, (2) CONSENT CALENDAR & (3) CLOSED SESSION ITEMS

MANNER OF ADDRESSING THE CITY COUNCIL: All remarks and questions shall be addressed to the City Council; no discussion or action will be taken pursuant to the Brown Act. No person shall speak without being recognized by the Mayor or Acting Mayor. Public comments are restricted to three (3) minutes per speaker.

TIME ALLOTMENT FOR PUBLIC COMMENT ON NON-AGENDA ITEMS: Thirty (30) minutes shall be allotted to receiving public comments. If necessary, the Mayor or Acting Mayor may allot an additional 30 minutes to public comments after Conduct of Business to allow those who have not yet spoken to do so. Any citizen, after being recognized by the Mayor or Acting Mayor, may speak on any topic that may be a proper subject for discussion before the City Council for such period of time as the Mayor or Acting Mayor may determine is appropriate under the circumstances of the particular meeting, including number of persons wishing to speak or the complexity of a particular topic. Time limitations shall be set without regard to a speaker's point of view or the content of the speech, as long as the speaker's comments are not disruptive of the meeting.

BROWN ACT REQUIREMENTS: The Brown Act does not allow action or discussion on items not on the agenda (subject to narrow exceptions). This will limit the Council's response to questions and requests made during this comment period.

3. STAFF COMMENTS

4. MATTERS FROM COUNCILMEMBERS

5. CONSENT CALENDAR

All items under the Consent Calendar will be acted upon in one motion unless a Councilmember requests that an individual item be taken up under Conduct of Business.

- 5A. [21-492](#) Adopt by Title Only and Waive the Second Reading of Ordinance 971-2021 Adding Chapter 7.18 (Feeding of Wildlife) to Title 7 (Animals) of the City of Fort Bragg Municipal Code to Prevent the Feeding of Wildlife in the City of Fort Bragg.

Attachments: [ORD 971-2021 Wildlife Feeding](#)

- 5B. [21-506](#) Adopt City Council Resolution Establishing a City of Fort Bragg Master Salary Rate Compensation Plan Confirming the Pay Rates/Ranges for All City of Fort Bragg Established Classifications

Attachments: [RESO Master Salary Compensation Schedule Analyst Exhibit A Compensation Schedule 09262021 Adjust Analyst Positions](#)

- 5C. [21-512](#) Adopt City Council Resolution Making the Legally Required Findings to Authorize the Conduct of Remote "Telephonic" Meetings During the State of Emergency

Attachments: [RESO Authorize Remote Meetings](#)
[Executive Order N-15-21](#)
[Gov Code Section 54953](#)
[Fort Bragg - AB 361 - Remote Meetings](#)
[Public Comment 5C](#)

- 5D. [21-514](#) Approve Third Amendment to City Manager Employment Agreement

Attachments: [835 Miller Agreement 3rd Amendment](#)

- 5E. [21-489](#) Receive and File Minutes of the April 14, 2021 Finance and Administration Committee Meeting

Attachments: [FAC 04142021](#)

- 5F. [21-490](#) Receive and File Minutes of the August 12, 2021 Public Works and Facilities Committee Meeting

Attachments: [PWF Committee Meeting Minutes 08122021](#)

- 5G. [21-510](#) Approve Minutes of Special Meeting of September 20, 2021

Attachments: [CCM2021-09-20_Special](#)

6. DISCLOSURE OF EX PARTE COMMUNICATIONS ON AGENDA ITEMS

7. PUBLIC HEARING

When a Public Hearing has been underway for a period of 60 minutes, the Council must vote on whether to continue with the hearing or to continue the hearing to another meeting.

8. CONDUCT OF BUSINESS

- 8A. [21-497](#) Receive Report and Consider Adoption of Urgency Ordinance No. 972-2021 Placing a 45-Day Moratorium on the Approval of Applications and Permits for Cannabis Dispensaries in the Inland Zoning Area

Attachments: [09272021 Moratorium Cannabis Dispensary in CBD](#)
[Att 1 - ORD 972 Moratorium on Cannabis Dispensaries](#)
[Cannabis Moratorium](#)
[Public Comment 8A](#)

- 8B. [21-508](#) Receive Report and Consider Establishing an Underground Utility District to Secure Rule 20 Work Credits and Avoid Becoming an Inactive District

- Attachments:** [09272021 Rule 20 District Report](#)
[ATT 1 – Electric Rule No. 20 Information Sheet](#)
[ATT 2 - Sample PG&E Provided Template Resolution](#)
[ATT 3 – Potential Underground Utility Districts](#)
[Public Comment 8B](#)

8C. [21-504](#) Receive Report and Consider Adoption of City Council Resolution Approving a One-time Contribution to Mendocino Solid Waste Management Authority (MSWMA)

- Attachments:** [09272021 MSWMA Payment Request](#)
[Att. 1 - RESO MSWMA 1X Payment](#)
[Att. 2 - Letter from MSWMA Board](#)
[Att. 3 - MSWMA Profit & Loss 2015-2021](#)
[Att. 4 - TAC Proposed Options](#)

9. CLOSED SESSION

ADJOURNMENT

The adjournment time for all Council meetings is no later than 10:00 p.m. If the Council is still in session at 10:00 p.m., the Council may continue the meeting upon majority vote.

**NEXT REGULAR CITY COUNCIL MEETING:
6:00 P.M., TUESDAY, OCTOBER 12, 2021**

STATE OF CALIFORNIA)
)ss.
COUNTY OF MENDOCINO)

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg and that I caused this agenda to be posted in the City Hall notice case on September 23, 2021.

June Lemos, CMC
City Clerk

NOTICE TO THE PUBLIC:

DISTRIBUTION OF ADDITIONAL INFORMATION FOLLOWING AGENDA PACKET DISTRIBUTION:

- *Materials related to an item on this Agenda submitted to the Council/District/Agency after distribution of the agenda packet are available for public inspection upon making reasonable arrangements with the City Clerk for viewing same during normal business hours.*
- *Such documents are also available on the City of Fort Bragg’s website at <https://city.fortbragg.com> subject to staff’s ability to post the documents before the meeting.*

ADA NOTICE AND HEARING IMPAIRED PROVISIONS:

It is the policy of the City of Fort Bragg to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities.

If you need assistance to ensure your full participation, please contact the City Clerk at (707) 961-2823. Notification 48 hours in advance of any need for assistance will enable the City to make reasonable arrangements to ensure accessibility.

This notice is in compliance with the Americans with Disabilities Act (28 CFR, 35.102-35.104 ADA Title II).



City of Fort Bragg

416 N Franklin Street
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Phone: (707) 961-2823
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Text File

File Number: 21-491

Agenda Date: 9/27/2021

Version: 1

Status: Mayor's Office

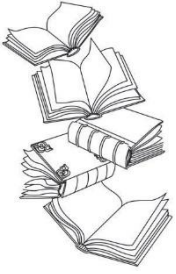
In Control: City Council

File Type: Proclamation

Agenda Number: 1A.

Presentation of Proclamation Recognizing the Week of September 26, 2021 as Banned Books Week

<https://bannedbooksweek.org/>



PROCLAMATION

Banned Books Week

Week of September 26, 2021

WHEREAS, the freedom to read is essential to our democracy, and reading is among our greatest freedoms; and

WHEREAS, privacy is essential to the exercise of that freedom, and the right to privacy is the right to open inquiry without having the subject of one's interest examined or scrutinized by others; and

WHEREAS, some individuals, groups, and public authorities work to remove or limit access to reading materials, to censor content in schools, to label "controversial" views, to distribute lists of "objectionable" books or authors, and to purge libraries of materials reflecting the diversity of society; and

WHEREAS, both governmental intimidation and the fear of censorship cause authors who seek to avoid controversy to practice self-censorship, thus limiting our access to new ideas; and

WHEREAS, every silencing of a heresy, every enforcement of an orthodoxy, diminishes the toughness and resilience of American society and leaves it less able to deal with controversy and difference; and

WHEREAS, Americans still favor free enterprise in ideas and expression, and can be trusted to exercise critical judgment, to recognize propaganda and misinformation, and to make their own decisions about what they read and believe, and to exercise the responsibilities that accompany this freedom; and

WHEREAS, intellectual freedom is essential to the preservation of a free society and a creative culture; and

WHEREAS, conformity limits the range and variety of inquiry and expression on which our democracy and our culture depend; and

WHEREAS, the American Library Association's Banned Books Week: Celebrating the Freedom to Read is observed during the last week of September each year as a reminder to Americans not to take their precious freedom for granted; and

WHEREAS, Banned Books Week celebrates the freedom to choose or the freedom to express one's opinion even if that opinion might be considered unorthodox or unpopular and stresses the importance of ensuring the availability of those unorthodox or unpopular viewpoints to all who wish to read them;

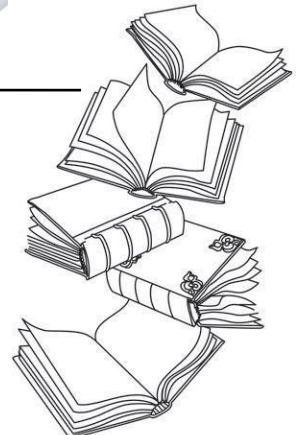
NOW, THEREFORE, I, Bernie Norvell, Mayor of the City of Fort Bragg, on behalf of the entire City Council, do hereby proclaim the week of September 26, 2021 as Banned Books Week.

SIGNED this 27th day of September 2021

BERNIE NORVELL, Mayor

ATTEST:

June Lemos, CMC, City Clerk







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Text File

File Number: 21-511

Agenda Date: 9/27/2021

Version: 2

Status: Mayor's Office

In Control: City Council

File Type: Proclamation

Agenda Number: 1B.

Presentation of Proclamation Recognizing September 15 - October 15 as Latino Heritage Month

PROCLAMATION
Latino Heritage Month

WHEREAS, California embraces and celebrates its diversity, and that includes the largest ethnic group in the state – 15.6 million Latinos call California home; and

WHEREAS, 32% of Fort Bragg’s population identifies as Latino; and

WHEREAS, 49% of our district student population are of Latino descent; and

WHEREAS, Latino Californians are a diverse group with roots stretching throughout North, Central and South America, and many trace their heritage to the original Indigenous communities of Latin America and Africa; and

WHEREAS, the Latino community is a dynamic, valued part of our city and a vital contributor to our economy, with an entrepreneurial spirit, a strong work ethic, and an unwavering belief in the American dream; and

WHEREAS, we recognize and are grateful to our Latino citizens who helped keep our neighborhoods, communities and state vibrant and prosperous. They are our teachers and business owners, scientists and soldiers, farmworkers and first responders, artists and activists, colleagues and friends; and

WHEREAS, this month, we honor the heritage of all Latinos in the state and celebrate the Independence Days of our neighbors Mexico, El Salvador, Guatemala, Costa Rica, Honduras, Chile, Nicaragua and Belize; and

WHEREAS, celebrating Latino Heritage Month from September 15 to October 15, allows us to appreciate and validate the diversity and character of our community;

NOW, THEREFORE, I, Bernie Norvell, Mayor of the City of Fort Bragg, on behalf of the entire City Council, do hereby proclaim September 15 - October 15, 2021 as Latino Heritage Month.

SIGNED this 27th day of September, 2021

BERNIE NORVELL, Mayor

ATTEST:

June Lemos, CMC, City Clerk

No. 17-2021





City of Fort Bragg

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Text File

File Number: 21-492

Agenda Date: 9/27/2021

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Ordinance

Agenda Number: 5A.

Adopt by Title Only and Waive the Second Reading of Ordinance 971-2021 Adding Chapter 7.18 (Feeding of Wildlife) to Title 7 (Animals) of the City of Fort Bragg Municipal Code to Prevent the Feeding of Wildlife in the City of Fort Bragg.

On September 27, 2021, the City Council of the City of Fort Bragg is to consider adoption of Ordinance 971-2021, said ordinance having been introduced for first reading (by title only and waiving further reading of the text) on September 13, 2021.

The proposed ordinance adds Chapter 7.18 (Feeding of Wildlife) to Title 7 (Animals) of the Fort Bragg Municipal Code. The proposed ordinance prohibits the feeding of wildlife within the City of Fort Bragg to protect the environment and to promote public health, safety and welfare.

If adopted, the ordinance will become effective on October 27, 2021.

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN ORDINANCE ADDING CHAPTER
7.18 (FEEDING OF WILDLIFE) TO TITLE
7 (ANIMALS) OF THE FORT BRAGG
MUNICIPAL CODE TO PROHIBIT THE
FEEDING OF WILDLIFE**

ORDINANCE NO. 971-2021

WHEREAS, the City of Fort Bragg (“City”) is a city organized under the laws of the State of California with authority to enact ordinances to protect the public health, safety and welfare within the City under Article XI, Section 7 of the California Constitution; and

WHEREAS, the feeding of wildlife can lead to negative impacts on animals, people and the environment; and

WHEREAS, feeding wildlife can lead to aggressive behavior towards humans, which presents health and safety concerns for residents and visitors of the City; and

WHEREAS, feeding wildlife can artificially support the growth and carrying capacity of urban wildlife populations, compromising wildlife health and increasing human exposure to, and potential conflicts with wildlife; and

WHEREAS, feeding wildlife can cause certain species to localize activity in the vicinity of the food source, thus increasing associated negative impacts on property owners and/ or individuals within those neighborhoods; and

WHEREAS, Section 251.1 of Title 14 of the California Code of Regulations prohibits the harassment of any game or nongame bird or mammal or furbearing mammal, expressly including intentional acts such as feeding that disrupt the animal’s natural foraging behavior; and

WHEREAS, the City Council finds that an ordinance prohibiting the intentional and negligent feeding of certain types of wildlife, as defined, and further specifying types of permissible and prohibited conduct regarding interaction with wildlife in the City, is consistent with the City’s long-standing commitment to protect and conserve biological resources and public safety and will promote the public health, safety and welfare.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. The foregoing recitals are true and correct and are made a part of this ordinance.

2. There is no possibility that the adoption of this ordinance will have a significant impact on the environment, and therefore, the adoption of this ordinance is exempt from the California Environmental Quality Act (“CEQA”), pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 2. Municipal Code Amendment. Title 7 (“Animals”) of the City of Fort Bragg Municipal Code is hereby amended to add Chapter 7.18 (“Feeding of Wildlife”) as follows:

CHAPTER 7.18 FEEDING OF WILDLIFE

- 7.18.010 Purpose**
- 7.18.020 Definitions**
- 7.18.030 Feeding of Wildlife Prohibited**
- 7.18.040 Exceptions**
- 7.18.050 Violation -- Penalty**

7.18.010 Purpose

Feeding of wildlife is both detrimental to wildlife health and causes a public health nuisance and safety hazard that negatively impacts public health and welfare.

This chapter is intended to prohibit, with certain exceptions, the feeding of wildlife within the City of Fort Bragg to protect the environment and promote the public health, safety and welfare.

7.18.020 Definitions

For purposes of this article, the following definitions shall apply:

“**Feed**” means to give, distribute, place, expose, deposit, or scatter any edible material on any public or private property with the intention of feeding, attracting, domesticating or enticing wildlife, whether or not wildlife is in the vicinity at the time. Feeding does not include baiting in the permitted and legal take or depredation of wildlife in accordance with federal, state and local law.

“**Person**” means any individual, corporation, company, partnership, firm, association, or political subdivision of this State subject to municipal jurisdiction.

“**Wildlife**” means any non-domesticated species of animal including but not limited to coyotes, deer, wild turkeys, foxes, skunks, raccoons, possums, squirrels, ducks, geese, ravens, crows, and gulls.

7.18.030 Feeding of Wildlife Prohibited

A. No person shall purposely or knowingly feed wildlife on public or private property in the City of Fort Bragg.

B. No person shall leave or store any refuse, garbage, pet food, seed or birdseed, fruit, meat, dairy, vegetable, grain or other food in a negligent manner likely to feed wildlife.

C. No person shall fail to take remedial action to cease contact or conflict with wildlife, including to secure or remove outdoor refuse, cooking grills, pet food, backyard bird feeders or any other similar food source or attractant, after being advised by the City of Fort Bragg to undertake such remedial action.

7.18.040 Exceptions

The prohibitions in Section 7.18.030 do not apply to:

A. Landscaping, gardening, and/or maintaining vegetable gardens, fruit and nut trees or other plants, so long as such activities are not conducted for the purpose of feeding wildlife as defined in this article.

B. Feeding of birds, except wild turkeys, outdoors on private residential properties using bird feeders, to the extent authorized by law and subject to the following requirements:

1. Bird feeders shall be placed at least five (5) feet above the ground and shall be suspended on a cable or otherwise secured so as to prevent the bird feeders from being easily accessible to other wildlife.
2. The feeding shall not substantially interfere with the rights of surrounding property owners.
3. The area below and around bird feeders must be kept clean and free of seed and an accumulation of feces.
4. No person shall knowingly allow or permit bird feeders to become an attractant for rodents or other wildlife other than birds.
5. Bird feeders shall be kept clean to prevent the spread of disease among wild bird populations.

C. Any State or local employee or agent authorized to implement a wildlife management program involving baiting, or any other person or business lawfully authorized to bait and trap wildlife pursuant to State law.

D. Any person who is the legal owner or guardian of a wildlife species maintained and confined under a valid license or permit issued by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service, and in compliance with all applicable laws.

E. A wildlife rehabilitator, under a valid license or permit issued by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service, who is temporarily caring for sick, injured, or orphaned wildlife in compliance with all applicable laws.

F. Any person who feeds trapped, injured, or orphaned wildlife between the time that a wildlife rehabilitator or agency charged with animal control is notified and the time the animal is picked up. Any person that discovers such trapped, injured, or orphaned wildlife must immediately notify an authorized animal control agency, and no person may intentionally keep such wildlife beyond the time reasonably necessary for animal control services to access and transport the wildlife.

G. Baiting, for the purpose of trapping, feral cats as part of a Society for the Prevention of Cruelty to Animals (SPCA) approved Trap-Neuter-Release program.

H. Any property owner baiting, for the purpose of trapping, wildlife on their property when authorized by, and in accordance with, State law including but not limited to trapping gophers, house mice, moles, rats, and voles pursuant to Fish and Game Code section 4005(f); taking of certain mammals found injuring crops or property pursuant to Fish and Game Code section 4152; taking of certain nongame birds and mammals such as weasels, skunks, opossum, moles and rodents pursuant to 14 CCR § 472; or as otherwise permitted and authorized by State law.

Section 7.18.050 Violation -- Penalty.

Any person violating any provision or failing to comply with any of the requirements of this chapter shall be deemed guilty of an infraction as set forth in Chapter 1.12 of this code.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 4. Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember Peters at a regular meeting of the City Council of the City of Fort Bragg held on September 13, 2021 and adopted at a regular meeting of the City of Fort Bragg held on September 27, 2021 by the following vote:

**AYES:
NOES:
ABSENT:**

**ABSTAIN:
RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

June Lemos, CMC
City Clerk

PUBLISH: July 29, 2021 and October 7, 2021 (by summary).
EFFECTIVE DATE: October 27, 2021.



City of Fort Bragg

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Text File

File Number: 21-506

Agenda Date: 9/27/2021

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5B.

Adopt City Council Resolution Establishing a City of Fort Bragg Master Salary Rate Compensation Plan Confirming the Pay Rates/Ranges for All City of Fort Bragg Established Classifications

The City Council approves all salary schedules which include classification titles and pay rates/ranges at the time a Memorandum of Understanding (MOU) for each bargaining unit is approved; when updates to the compensation and benefits for unrepresented employees are approved; or when specific wage and/or classification title adjustments are needed. The City has a long-standing practice of posting these approved salary schedules on the City website as well as having copies available upon request. The California Public Employees' Retirement Code requires the City to have a publicly adopted and posted Compensation Schedule.

The attached Salary Rate Compensation Plan adjust the salary schedule for the Public Works Administrative Analyst so that it is consistent and aligned with the Human Resources Analyst and the Administrative Analyst positions that perform similar tasks and duties at an equivalent level of complexity.

RESOLUTION NO. ____-2021

RESOLUTION OF THE FORT BRAGG CITY COUNCIL ESTABLISHING A CITY OF FORT BRAGG MASTER SALARY RATE COMPENSATION PLAN CONFIRMING THE PAY RATES/RANGES FOR ALL CITY OF FORT BRAGG ESTABLISHED CLASSIFICATIONS

WHEREAS, the Fort Bragg City Council approves all salary schedules which include classification titles and compensation rates; and

WHEREAS, the establishment of this Resolution meets the requirements of California Regulations Section 570.5 as confirmed by the California CalPERS; and

WHEREAS, to align the City’s three Analyst positions so that the pay schedule is consistent across departments for tasks and duties at the same or similar level of complexity, the Public Works Administrative Analyst position wage rate is adjusted to be equal to and consistent with the Human Resources Analyst and Administrative Analyst positions; and

WHEREAS, the California Public Employees’ Retirement System code requires the City to have a publicly adopted and posted salary schedule; and

WHEREAS, the full salary schedule is allocated in the Proposed FY 2021/2022 budget; and

WHEREAS, the full salary schedule is available on the City’s website.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby establish a compensation plan, terms, and conditions of employment for all established classifications.

BE IT FURTHER RESOLVED that the City Council of the City of Fort Bragg does hereby adopt the City of Fort Bragg Master Salary Rate Compensation Plan as presented in “Exhibit A” effective September 26, 2021.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 27th day of September 2021, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

June Lemos, CMC
City Clerk

CITY OF FORT BRAGG SALARY RATE COMPENSATION PLAN

Effective 09.26.2021 to adjust Public Works Analyst to be consistent with other department Analyst Positions Resolution XXXX-2021.

				Step 1	Step 2	Step 3	Step 4	Step 5
Administrative Analyst (Confidential; Non-Bargaining)								
Hourly				25.68	26.96	28.31	29.73	31.22
Bi-Weekly				2,054.40	2,156.80	2,264.80	2,378.40	2,497.60
Monthly				4,451.20	4,673.07	4,907.07	5,153.20	5,411.47
Annual				53,414.40	56,076.80	58,884.80	61,838.40	64,937.60
Administrative Assistant - Administration (FBEO)								
Hourly				23.67	24.85	26.09	27.39	28.76
Bi-Weekly				1,893.60	1,988.00	2,087.20	2,191.20	2,300.80
Monthly				4,102.80	4,307.33	4,522.27	4,747.60	4,985.07
Annual				49,233.60	51,688.00	54,267.20	56,971.20	59,820.80
Administrative Assistant - Community Development (FBEO)								
Hourly				23.67	24.85	26.09	27.39	28.76
Bi-Weekly				1,893.60	1,988.00	2,087.20	2,191.20	2,300.80
Monthly				4,102.80	4,307.33	4,522.27	4,747.60	4,985.07
Annual				49,233.60	51,688.00	54,267.20	56,971.20	59,820.80
Administrative Assistant - Police (FBEO)								
Hourly				23.67	24.85	26.09	27.39	28.76
Bi-Weekly				1,893.60	1,988.00	2,087.20	2,191.20	2,300.80
Monthly				4,102.80	4,307.33	4,522.27	4,747.60	4,985.07
Annual				49,233.60	51,688.00	54,267.20	56,971.20	59,820.80
Assistant Director - Engineering Division (Mid-Management; Non-Bargaining)								
Hourly				35.03	36.78	38.62	40.55	42.58
Bi-Weekly				2,802.40	2,942.40	3,089.60	3,244.00	3,406.40
Monthly				6,071.87	6,375.20	6,694.13	7,028.67	7,380.53
Annual				72,862.40	76,502.40	80,329.60	84,344.00	88,566.40
Assistant City Engineer (FBEO)								
Hourly				31.96	33.56	35.24	37.00	38.85
Bi-Weekly				2,556.80	2,684.80	2,819.20	2,960.00	3,108.00
Monthly				5,539.73	5,817.07	6,108.27	6,413.33	6,734.00
Annual				66,476.80	69,804.80	73,299.20	76,960.00	80,808.00
Assistant Finance Director (Mid-Management; Non-Bargaining)								
Hourly				37.89	39.78	41.77	43.86	46.05
Bi-Weekly				3,031.20	3,182.40	3,341.60	3,508.80	3,684.00
Monthly				6,567.60	6,895.20	7,240.13	7,602.40	7,982.00
Annual				78,811.20	82,742.40	86,881.60	91,228.80	95,784.00
Assistant Planner (FBEO)								
Hourly				30.45	31.97	33.57	35.25	37.01
Bi-Weekly				2,436.00	2,557.60	2,685.60	2,820.00	2,960.80
Monthly				5,278.00	5,541.47	5,818.80	6,110.00	6,415.07
Annual				63,336.00	66,497.60	69,825.60	73,320.00	76,980.80

CITY OF FORT BRAGG SALARY RATE COMPENSATION PLAN

Effective 09.26.2021 to adjust Public Works Analyst to be consistent with other department Analyst Positions Resolution XXXX-2021.

				Step 1	Step 2	Step 3	Step 4	Step 5
Assistant to the City Manager (Mid-Management; Non-Bargaining)								
Hourly				35.03	36.78	38.62	40.55	42.58
Bi-Weekly				2,802.40	2,942.40	3,089.60	3,244.00	3,406.40
Monthly				6,071.87	6,375.20	6,694.13	7,028.67	7,380.53
Annual				72,862.40	76,502.40	80,329.60	84,344.00	88,566.40
Associate Planner (FBEO)								
Hourly				31.53	33.11	34.77	36.51	38.34
Bi-Weekly				2,522.40	2,648.80	2,781.60	2,920.80	3,067.20
Monthly				5,465.20	5,739.07	6,026.80	6,328.40	6,645.60
Annual				65,582.40	68,868.80	72,321.60	75,940.80	79,747.20
City Clerk (Mid-Management; Non-Bargaining)								
Hourly				35.03	36.78	38.62	40.55	42.58
Bi-Weekly				2,802.40	2,942.40	3,089.60	3,244.00	3,406.40
Monthly				6,071.87	6,375.20	6,694.13	7,028.67	7,380.53
Annual				72,862.40	76,502.40	80,329.60	84,344.00	88,566.40
City Councilmember (Elected)								
Hourly								
Bi-Weekly				138.46				
Monthly				300.00				
Annual				3,600.00	Plus \$100/mo for Special District Meeting			
City Manager (Executive; At Will; Contract)								
Hourly				73.37				
Bi-Weekly				5,869.35				
Monthly				12,716.92				
Annual				152,603.00				
Code Enforcement (FBEO)								
Hourly				30.45	31.97	33.57	35.25	37.01
Bi-Weekly				2,436.00	2,557.60	2,685.60	2,820.00	2,960.80
Monthly				5,278.00	5,541.47	5,818.80	6,110.00	6,415.07
Annual				63,336.00	66,497.60	69,825.60	73,320.00	76,980.80
Community Services Officer (FBPA)								
Hourly				21.42	22.49	23.61	24.79	26.03
Bi-Weekly				1,713.60	1,799.20	1,888.80	1,983.20	2,082.40
Monthly				3,712.80	3,898.27	4,092.40	4,296.93	4,511.87
Annual				44,553.60	46,779.20	49,108.80	51,563.20	54,142.40
Construction Project Manager (Mid-Management; Non-Bargaining)								
Hourly				40.75	42.79	44.93	47.18	49.54
Bi-Weekly				3,260.00	3,423.20	3,594.40	3,774.40	3,963.20
Monthly				7,063.33	7,416.93	7,787.87	8,177.87	8,586.93
Annual				84,760.00	89,003.20	93,454.40	98,134.40	103,043.20

CITY OF FORT BRAGG SALARY RATE COMPENSATION PLAN

Effective 09.26.2021 to adjust Public Works Analyst to be consistent with other department Analyst Positions Resolution XXXX-2021.

				Step 1	Step 2	Step 3	Step 4	Step 5
Construction Project Manager (Temporary, Part-time, At-Will)								
				40.75	42.79	44.93	47.18	49.54
Director - Community Development Department (Executive; At Will)								
Hourly				47.85	50.24	52.75	55.39	58.16
Bi-Weekly				3,828.00	4,019.20	4,220.00	4,431.20	4,652.80
Monthly				8,294.00	8,708.27	9,143.33	9,600.93	10,081.07
Annual				99,528.00	104,499.20	109,720.00	115,211.20	120,972.80
Director of Public Works (Executive; At Will)								
Hourly				47.85	50.24	52.75	55.39	58.16
Bi-Weekly				3,828.00	4,019.20	4,220.00	4,431.20	4,652.80
Monthly				8,294.00	8,708.27	9,143.33	9,600.93	10,081.07
Annual				99,528.00	104,499.20	109,720.00	115,211.20	120,972.80
Engineering Technician (FBEO)								
Hourly				28.99	30.44	31.96	33.56	35.24
Bi-Weekly				2,319.20	2,435.20	2,556.80	2,684.80	2,819.20
Monthly				5,024.93	5,276.27	5,539.73	5,817.07	6,108.27
Annual				60,299.20	63,315.20	66,476.80	69,804.80	73,299.20
Environmental Compliance Coordinator (FBEO)								
Hourly				33.53	35.21	36.97	38.82	40.76
Bi-Weekly				2,682.40	2,816.80	2,957.60	3,105.60	3,260.80
Monthly				5,811.87	6,103.07	6,408.13	6,728.80	7,065.07
Annual				69,742.40	73,236.80	76,897.60	80,745.60	84,780.80
Finance Technician I (FBEO)								
Hourly				21.34	22.41	23.53	24.71	25.95
Bi-Weekly				1,707.20	1,792.80	1,882.40	1,976.80	2,076.00
Monthly				3,698.93	3,884.40	4,078.53	4,283.07	4,498.00
Annual				44,387.20	46,612.80	48,942.40	51,396.80	53,976.00
Finance Technician II (FBEO)								
Hourly				23.53	24.71	25.95	27.25	28.61
Bi-Weekly				1,882.40	1,976.80	2,076.00	2,180.00	2,288.80
Monthly				4,078.53	4,283.07	4,498.00	4,723.33	4,959.07
Annual				48,942.40	51,396.80	53,976.00	56,680.00	59,508.80
Finance Technician III (FBEO)								
Hourly				25.93	27.23	28.59	30.02	31.52
Bi-Weekly				2,074.40	2,178.40	2,287.20	2,401.60	2,521.60
Monthly				4,494.53	4,719.87	4,955.60	5,203.47	5,463.47
Annual				53,934.40	56,638.40	59,467.20	62,441.60	65,561.60

CITY OF FORT BRAGG SALARY RATE COMPENSATION PLAN

Effective 09.26.2021 to adjust Public Works Analyst to be consistent with other department Analyst Positions Resolution XXXX-2021.

				Step 1	Step 2	Step 3	Step 4	Step 5
Government Accountant I (FBEO)								
Hourly				28.59	30.02	31.52	33.10	34.76
Bi-Weekly				2,287.20	2,401.60	2,521.60	2,648.00	2,780.80
Monthly				4,955.60	5,203.47	5,463.47	5,737.33	6,025.07
Annual				59,467.20	62,441.60	65,561.60	68,848.00	72,300.80
Grant Manager (Mid-Management; Non-Bargaining)								
Hourly				35.03	36.78	38.62	40.55	42.58
Bi-Weekly				2,802.40	2,942.40	3,089.60	3,244.00	3,406.40
Monthly				6,071.87	6,375.20	6,694.13	7,028.67	7,380.53
Annual				72,862.40	76,502.40	80,329.60	84,344.00	88,566.40
Grants Coordinator (FBEO)								
Hourly				28.59	30.02	31.52	33.10	34.76
Bi-Weekly				2,287.20	2,401.60	2,521.60	2,648.00	2,780.80
Monthly				4,955.60	5,203.47	5,463.47	5,737.33	6,025.07
Annual				59,467.20	62,441.60	65,561.60	68,848.00	72,300.80
Housing and Economic Development Coordinator (Confidential; Non-Bargaining)								
Hourly				31.97	33.57	35.25	37.01	38.86
Bi-Weekly				2,557.60	2,685.60	2,820.00	2,960.80	3,108.80
Monthly				5,541.47	5,818.80	6,110.00	6,415.07	6,735.73
Annual				66,497.60	69,825.60	73,320.00	76,980.80	80,828.80
Human Resources Analyst (Confidential; Non-Bargaining)								
Hourly				25.68	26.96	28.31	29.73	31.22
Bi-Weekly				2,054.40	2,156.80	2,264.80	2,378.40	2,497.60
Monthly				4,451.20	4,673.07	4,907.07	5,153.20	5,411.47
Annual				53,414.40	56,076.80	58,884.80	61,838.40	64,937.60
Intern (Part-time, Less than 20 hours week; Non-Bargaining)								
Hourly				18.00				
Laborer (Part-time, Less than 20 hours week; Non-Bargaining)								
Hourly				18.00				
Maintenance Worker I - Janitor (FBEO)								
Hourly				17.19	18.05	18.95	19.90	20.90
Bi-Weekly				1,375.20	1,444.00	1,516.00	1,592.00	1,672.00
Monthly				2,979.60	3,128.67	3,284.67	3,449.33	3,622.67
Annual				35,755.20	37,544.00	39,416.00	41,392.00	43,472.00
Maintenance Worker II (FBEO)								
Hourly				22.73	23.87	25.06	26.31	27.63
Bi-Weekly				1,818.40	1,909.60	2,004.80	2,104.80	2,210.40
Monthly				3,939.87	4,137.47	4,343.73	4,560.40	4,789.20
Annual				47,278.40	49,649.60	52,124.80	54,724.80	57,470.40

CITY OF FORT BRAGG SALARY RATE COMPENSATION PLAN

Effective 09.26.2021 to adjust Public Works Analyst to be consistent with other department Analyst Positions Resolution XXXX-2021.

			Step 1	Step 2	Step 3	Step 4	Step 5	
Maintenance Worker III (FBEO)								
Hourly			23.87	25.06	26.31	27.63	29.01	
Bi-Weekly			1,909.60	2,004.80	2,104.80	2,210.40	2,320.80	
Monthly			4,137.47	4,343.73	4,560.40	4,789.20	5,028.40	
Annual			49,649.60	52,124.80	54,724.80	57,470.40	60,340.80	
Maintenance Worker IV (FBEO)								
Hourly			25.05	26.30	27.62	29.00	30.45	
Bi-Weekly			2,004.00	2,104.00	2,209.60	2,320.00	2,436.00	
Monthly			4,342.00	4,558.67	4,787.47	5,026.67	5,278.00	
Annual			52,104.00	54,704.00	57,449.60	60,320.00	63,336.00	
Maintenance Worker Lead (FBEO)								
Hourly			27.55	28.93	30.38	31.90	33.50	
Bi-Weekly			2,204.00	2,314.40	2,430.40	2,552.00	2,680.00	
Monthly			4,775.33	5,014.53	5,265.87	5,529.33	5,806.67	
Annual			57,304.00	60,174.40	63,190.40	66,352.00	69,680.00	
Mechanic (FBEO)								
Hourly			25.68	26.96	28.31	29.73	31.22	
Bi-Weekly			2,054.40	2,156.80	2,264.80	2,378.40	2,497.60	
Monthly			4,451.20	4,673.07	4,907.07	5,153.20	5,411.47	
Annual			53,414.40	56,076.80	58,884.80	61,838.40	64,937.60	
Office Assistant (Temporary Position)								
Hourly			20.00					
Operations Manager (Mid-Management; Non-Bargaining)								
Hourly			35.03	36.78	38.62	40.55	42.58	
Bi-Weekly			2,802.40	2,942.40	3,089.60	3,244.00	3,406.40	
Monthly			6,071.87	6,375.20	6,694.13	7,028.67	7,380.53	
Annual			72,862.40	76,502.40	80,329.60	84,344.00	88,566.40	
Operations Supervisor (FBEO)								
Hourly			33.53	35.21	36.97	38.82	40.76	
Bi-Weekly			2,682.40	2,816.80	2,957.60	3,105.60	3,260.80	
Monthly			5,811.87	6,103.07	6,408.13	6,728.80	7,065.07	
Annual			69,742.40	73,236.80	76,897.60	80,745.60	84,780.80	
Police Captain (Mid-Management; Non-Bargaining)								
Hourly			52.51	55.14	57.90	60.80	63.84	
Bi-Weekly			4,200.80	4,411.20	4,632.00	4,864.00	5,107.20	
Monthly			9,101.73	9,557.60	10,036.00	10,538.67	11,065.60	
Annual			109,220.80	114,691.20	120,432.00	126,464.00	132,787.20	

CITY OF FORT BRAGG SALARY RATE COMPENSATION PLAN

Effective 09.26.2021 to adjust Public Works Analyst to be consistent with other department Analyst Positions Resolution XXXX-2021.

				Step 1	Step 2	Step 3	Step 4	Step 5
Police Chief (Executive; At Will)								
Hourly				60.79	63.83	67.02	70.37	73.89
Bi-Weekly				4,863.20	5,106.40	5,361.60	5,629.60	5,911.20
Monthly				10,536.93	11,063.87	11,616.80	12,197.47	12,807.60
Annual				126,443.20	132,766.40	139,401.60	146,369.60	153,691.20
Interim Police Chief (Temporary Executive; At Will)								
Hourly				60.79	63.83	67.02	70.37	73.89
Police Sergeant Intermediate POST (FBPA)								
Hourly				39.79	41.78	43.87	46.06	48.36
Bi-Weekly				3,183.20	3,342.40	3,509.60	3,684.80	3,868.80
Monthly				6,896.93	7,241.87	7,604.13	7,983.73	8,382.40
Annual				82,763.20	86,902.40	91,249.60	95,804.80	100,588.80
Police Sergeant Advance POST (FBPA)								
Hourly				42.07	44.17	46.38	48.70	51.14
Bi-Weekly				3,365.60	3,533.60	3,710.40	3,896.00	4,091.20
Monthly				7,292.13	7,656.13	8,039.20	8,441.33	8,864.27
Annual				87,505.60	91,873.60	96,470.40	101,296.00	106,371.20
Police Officer Basic POST (FBPA)								
Hourly				31.25	32.81	34.45	36.17	37.98
Bi-Weekly				2,500.00	2,624.80	2,756.00	2,893.60	3,038.40
Monthly				5,416.67	5,687.07	5,971.33	6,269.47	6,583.20
Annual				65,000.00	68,244.80	71,656.00	75,233.60	78,998.40
Police Officer Intermediate POST (FBPA)								
Hourly				32.82	34.46	36.18	37.99	39.89
Bi-Weekly				2,625.60	2,756.80	2,894.40	3,039.20	3,191.20
Monthly				5,688.80	5,973.07	6,271.20	6,584.93	6,914.27
Annual				68,265.60	71,676.80	75,254.40	79,019.20	82,971.20
Police Officer Advance POST (FBPA)								
Hourly				34.42	36.14	37.95	39.85	41.84
Bi-Weekly				2,753.60	2,891.20	3,036.00	3,188.00	3,347.20
Monthly				5,966.13	6,264.27	6,578.00	6,907.33	7,252.27
Annual				71,593.60	75,171.20	78,936.00	82,888.00	87,027.20
								4.00
Police Recruit (1040 hours; FBPA)								
Hourly				25.30				
Police Services Transporter: (Part-Time/On-Call, 1000 Max Annual Hours; Non-Bargaining)								
Hourly				18.00				
Public Works Administrative Analyst (FBEO)								
Hourly				25.68	26.96	28.31	29.73	31.22
Bi-Weekly				2,054.40	2,156.80	2,264.80	2,378.40	2,497.60
Monthly				4,451.20	4,673.07	4,907.07	5,153.20	5,411.47
Annual				53,414.40	56,076.80	58,884.80	61,838.40	64,937.60

CITY OF FORT BRAGG SALARY RATE COMPENSATION PLAN

Effective 09.26.2021 to adjust Public Works Analyst to be consistent with other department Analyst Positions Resolution XXXX-2021.

				Step 1	Step 2	Step 3	Step 4	Step 5
Seasonal: Laborer (1000 Maximum Annual Hours; Non-Bargaining)								
Hourly				18.00				
Seasonal: Parking Enforcement Attendant (Part-Time, 1000 Max Annual Hours; Non-Bargaining)								
Hourly				18.00				
Senior Government Accountant (Mid-Management; Non-Bargaining)								
Hourly				35.03	36.78	38.62	40.55	42.58
Bi-Weekly				2,802.40	2,942.40	3,089.60	3,244.00	3,406.40
Monthly				6,071.87	6,375.20	6,694.13	7,028.67	7,380.53
Annual				72,862.40	76,502.40	80,329.60	84,344.00	88,566.40
Senior Planner (Mid-Management; Non-Bargaining)								
Hourly				35.03	36.78	38.62	40.55	42.58
Bi-Weekly				2,802.40	2,942.40	3,089.60	3,244.00	3,406.40
Monthly				6,071.87	6,375.20	6,694.13	7,028.67	7,380.53
Annual				72,862.40	76,502.40	80,329.60	84,344.00	88,566.40
Systems Analyst - Lead (Confidential; Non-Bargaining)								
Hourly				31.97	33.57	35.25	37.01	38.86
Bi-Weekly				2,557.60	2,685.60	2,820.00	2,960.80	3,108.80
Monthly				5,541.47	5,818.80	6,110.00	6,415.07	6,735.73
Annual				66,497.60	69,825.60	73,320.00	76,980.80	80,828.80
Systems Analyst (Confidential; Non-Bargaining)								
Hourly				28.59	30.02	31.52	33.10	34.76
Bi-Weekly				2,287.20	2,401.60	2,521.60	2,648.00	2,780.80
Monthly				4,955.60	5,203.47	5,463.47	5,737.33	6,025.07
Annual				59,467.20	62,441.60	65,561.60	68,848.00	72,300.80
Systems Technician (FBEO)								
Hourly				21.93	23.03	24.18	25.39	26.66
Bi-Weekly				1,754.40	1,842.40	1,934.40	2,031.20	2,132.80
Monthly				3,801.20	3,991.87	4,191.20	4,400.93	4,621.07
Annual				45,614.40	47,902.40	50,294.40	52,811.20	55,452.80
Treatment Plant Operator-in-Training (FBEO)								
Hourly				19.49	20.46	21.48	22.55	23.68
Bi-Weekly				1,559.20	1,636.80	1,718.40	1,804.00	1,894.40
Monthly				3,378.27	3,546.40	3,723.20	3,908.67	4,104.53
Annual				40,539.20	42,556.80	44,678.40	46,904.00	49,254.40
Treatment Plant Operator I (FBEO)								
Hourly				24.19	25.40	26.67	28.00	29.40
Bi-Weekly				1,935.20	2,032.00	2,133.60	2,240.00	2,352.00
Monthly				4,192.93	4,402.67	4,622.80	4,853.33	5,096.00
Annual				50,315.20	52,832.00	55,473.60	58,240.00	61,152.00

CITY OF FORT BRAGG SALARY RATE COMPENSATION PLAN

Effective 09.26.2021 to adjust Public Works Analyst to be consistent with other department Analyst Positions Resolution XXXX-2021.

				Step 1	Step 2	Step 3	Step 4	Step 5
Treatment Plant Operator II (FBEO)								
Hourly				25.41	26.68	28.01	29.41	30.88
Biweekly				2,032.80	2,134.40	2,240.80	2,352.80	2,470.40
Monthly				4,404.40	4,624.53	4,855.07	5,097.73	5,352.53
Annual				52,852.80	55,494.40	58,260.80	61,172.80	64,230.40
Treatment Plant Operator - Wastewater, Lead (FBEO)								
Hourly				29.22	30.68	32.21	33.82	35.51
Biweekly				2,337.60	2,454.40	2,576.80	2,705.60	2,840.80
Monthly				5,064.80	5,317.87	5,583.07	5,862.13	6,155.07
Annual				60,777.60	63,814.40	66,996.80	70,345.60	73,860.80
Treatment Plant Operator - Water, Collection and Distribution, Lead (FBEO)								
Hourly				30.68	32.21	33.82	35.51	37.29
Biweekly				2,454.40	2,576.80	2,705.60	2,840.80	2,983.20
Monthly				5,317.87	5,583.07	5,862.13	6,155.07	6,463.60
Annual				63,814.40	66,996.80	70,345.60	73,860.80	77,563.20



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 21-512

Agenda Date: 9/27/2021

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Resolution

Agenda Number: 5C.

Adopt City Council Resolution Making the Legally Required Findings to Authorize the Conduct of Remote "Telephonic" Meetings During the State of Emergency

On March 4, 2020, Governor Newsom declared a state of emergency. That declaration is still in effect. Since March 12, 2020, Executive Orders from the Governor have relaxed various Brown Act meeting requirements to allow remote meetings and to temporarily suspend the Brown Act provisions requiring the physical presence of members at the public meeting. The most recent extension of that authorization will expire at the end of September 2021.

Starting October 1, and running through the end of 2023, to participate in remote meetings, public agencies must comply with the requirements of new subsection (e) of Government Code section 54953. Adoption of this resolution will allow the City Council and the four standing subcommittees (Finance and Administration, Community Development, Public Works and Facilities, and Public Safety) to continue to meet remotely via video conference. After the adoption of this initial resolution and its findings, the Council will need to make the same determination every 30 days. The City Attorney's office recommends that the simplest course of action is for the Council to approve a consent calendar item at each subsequent meeting to make the legally required finding described in subsection (e)(3) to thereby allow the legislative body to continue to meet remotely until no longer required.

RESOLUTION NO. ____-2021

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
MAKING THE LEGALLY REQUIRED FINDINGS TO AUTHORIZE
THE CONDUCT OF REMOTE “TELEPHONIC” MEETINGS
DURING THE STATE OF EMERGENCY**

WHEREAS, on March 4, 2020, pursuant to California Gov. Code Section 8625, the Governor declared a state of emergency; and

WHEREAS, on September 17, 2021, Governor Newsom signed AB 361, which bill went into immediate effect as urgency legislation; and

WHEREAS, AB 361 added subsection (e) to Gov. Code Section 54953 to authorize legislative bodies to conduct remote meetings provided the legislative body makes specified findings; and

WHEREAS, as of September 19, 2021, the COVID-19 pandemic has killed more than 67,612 Californians; and

WHEREAS, social distancing measures decrease the chance of spread of COVID-19; and

WHEREAS, it is appropriate for this body to make the findings specified in subsection (3)(1) of section 54953, to thereby authorize this body and all of its standing subcommittees to meet remotely;

NOW, THEREFORE, IT IS RESOLVED by the City Council of the City of Fort Bragg as follows:

1. This legislative body finds that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 27th day of September, 2021, by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

June Lemos, CMC
City Clerk

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

EXECUTIVE ORDER N-15-21

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS on June 11, 2021, I issued Executive Order N-08-21 to roll back certain provisions of my COVID-19-related Executive Orders and to clarify that other provisions remained necessary to help California respond to, recover from, and mitigate the impacts of the COVID-19 pandemic; and

WHEREAS Paragraph 42 of Executive Order N-08-21 waived and set forth certain requirements related to public meetings of local legislative and state bodies, and specified that it would be valid through September 30; and

WHEREAS on September 16, 2021, I signed into law Assembly Bill 361 (AB 361), which pertains to the same subject matter as Paragraph 42 of Executive Order N-08-21, which took effect immediately pursuant to an urgency clause, and which may, in some instances, have different substantive provisions than the provisions contained in Paragraph 42 of Executive Order N-08-21; and

WHEREAS it is necessary to provide clarity around the applicable procedures governing meetings of local legislative and state bodies until Paragraph 42 of Executive Order N-08-21 expires to further mitigate the impacts of the COVID-19 pandemic as the state continues to reopen and to ensure that critical governmental functions are not interrupted.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. The provisions governing teleconference meetings in Education Code section 89305.6, Government Code section 11133, and subdivision (e) of Government Code section 54953 are suspended through September 30, 2021, except that any local legislative body that meets to take a majority vote pursuant to subparagraph (B) of paragraph (1) of subdivision (e) of Government Code section 54953 shall conduct the meeting at which such vote is taken as required by paragraph (2) of subdivision (e) of Government Code section 54953. Except as otherwise specified in this paragraph, the requirements related to public meetings of local legislative and state bodies specified in Paragraph 42 of Executive Order N-08-21 shall continue to govern such meetings through September 30, 2021.
2. This Order shall expire at 11:59 p.m. on October 1, 2021.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 20th day of September 2021.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, Ph.D.
Secretary of State

State of California

GOVERNMENT CODE

Section 54953

54953. (a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action

is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment

period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

(Amended by Stats. 2021, Ch. 165, Sec. 3. (AB 361) Effective September 16, 2021. Repealed as of January 1, 2024, by its own provisions. See later operative version added by Sec. 4 of Stats. 2021, Ch. 165.)

MEMORANDUM

To: Tabatha Miller, City Manager

From: Keith Collins, City Attorney
By: Scott E. Porter, Assistant City Attorney

Date: September 20, 2021

Subject: AB 361 – Brown Act – Remote Meetings During State of Emergency

I. SUMMARY

On Friday, September 17, 2021, the Governor signed AB 361. Because the bill contained urgency findings, the law is now in effect. AB 361 allows local agencies to continue to conduct remote (“Zoom”) meetings during a declared state of emergency, provided local agencies comply with specified requirements.¹ Absent this legislation, local agencies would have had to return to traditional meetings beginning on October 1, 2021.

II. BACKGROUND

On March 4, 2020, Governor Newsom declared a state of emergency. That declaration is still in effect. Since March 12, 2020,² Executive Orders from the Governor have relaxed various Brown Act meeting requirements to allow remote meetings and to temporarily suspended the Brown Act provisions requiring the physical presence of members at the public meetings. The most recent extension of that authorization will expire at the end of this month.³

Starting October 1, and running through the end of 2023, to participate in remote meetings, public agencies must comply with the requirements of new subsection (e) of Government Code section 54953.⁴

¹ The bill also amends rules applicable to (a) the conduct of meetings of state bodies pursuant to the Bagley Keene Open Meeting Act (new Government Code § 11133) and (b) student body organizations at California State University (CSU) schools pursuant to the Gloria Romero Open Meetings Act of 2000 (new Education Code § 89305.6. Those amendments are not analyzed in this memorandum.

² On March 17, 2020, Executive Order N-29-20 superseded the March 12, 2020 Executive Order 25-20. *See* March 18, 2020 Jones & Mayer Memorandum *COVID-19 – Governor’s Order N-29-20*. Executive Order N-29-20 is available here: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.17.20-N-29-20-EO.pdf>

³ See Executive Order, ¶42.

⁴ The text of new subsection (e) is within Section 3 of AB 361 and begins at the top of page 13/19 of this document: https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=20210220AB361&version=20210AB36192CHP. If SB 339 (which currently awaiting the Governor’s signature) is adopted in its current form, then subsection (a) of existing section 54953 will also be revised as follows:

“(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local ~~agency~~, agency in person, except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.”

A. Remote Meeting Rules Through December 31, 2023

Cities and other local agencies have until September 30, 2021 to conduct remote public meetings pursuant to the Governor’s Executive Order.⁵ In most respects, SB 361 does not change how most local agencies will operate, except in one main respect.

1. New: Declaration of “Imminent Risks to Health or Safety of Attendees”

a. Initial Remote Meeting

For the first remote public meeting a legislative body on or after October 1, such meeting is only allowed if it is during a state of emergency⁶ proclaimed by the Governor, and at least one of the following is true:

- 1) “[S]tate or local officials have imposed or recommended measures to promote social distancing”⁷; or
- 2) The legislative body is holding a meeting for the purpose of determining “whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.” That is, the legislative body will be determining whether there is such risk.
- 3) By “majority vote”⁸ the legislative body determined that “*as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.*” That is, the legislative body already determined there is such risk.

The text of this rule states that it applies to any “legislative body” which is to meet remotely. The Brown Act defines “legislative body” broadly to include *every* body subject to the Brown Act, including City Councils, Planning Commissions, etc.⁹ Thus, taken literally, *every* body subject to the Brown Act (City Council, Planning Commission, etc.) must make its own determination of whether the emergency presents “imminent risks to the health or safety of attendees.” The League of California City’s Brown Act committee considered this language and interpreted it as meaning either (1) the city council may make the finding on behalf of all city committees; or (2) each committee in the city must make its own finding. Cities may wish to speak directly with their City Attorney to determine how best to proceed given this language.

⁵ Earlier today, Governor Newsom issued Executive Order N-15-21 to clarify that local agencies which are conducting remote meetings through September 30 *must* still conduct their actions in accord with Paragraph 42 of Executive Order N-08-21. The order is available here: <https://www.gov.ca.gov/wp-content/uploads/2021/09/9.20.21-executive-order.pdf>. He suspended the operative provisions in AB 361 until the end of the month, except that local agencies can opt to make the initial finding of the need to meet remotely under 54953(e)(1)(B), discussed on this page.

⁶ Gov’t Code §54953(g)(4) defines “state of emergency” as a state of emergency proclaimed by the Governor. California has been in a state of emergency since March 4, 2020, as authorized by Government Code § 8625.

⁷ It is important to distinguish social distancing recommendations (e.g., stay 6 feet apart) from other safety protocols such as masking and vaccines.

⁸ This would include a majority of a quorum. If, for example, there are 5 members of a legislative body, but only 3 are in attendance at a meeting, then 2 would constitute a majority of those in attendance, and therefore may vote to conduct the meeting remotely.

⁹ Gov’t Code 54952 defines “legislative body.”

b. Subsequent Remote Meetings

Any time after the first remote meeting of the legislative body, it can meet remotely if both of the following apply:

1. State/local emergency/social distancing. Either:
 - a. “a state of emergency remains active” or
 - b. “state or local officials have imposed or recommended measures to promote social distancing” and
2. 30 days. Within the last 30 days (which vote may occur at that meeting) the legislative body has made the following findings by majority vote “(A) *The legislative body has reconsidered the circumstances of the state of emergency. (B) Any of the following circumstances exist (i) The state of emergency continues to directly impact the ability of the members to meet safely in person. (ii) State or local officials continue to impose or recommend measures to promote social distancing.*”

Subsection (e)(3) states that after the legislative body makes this determination, the legislative body must make this determination “every 30 days thereafter.” That makes sense for legislative bodies which meet every 30 days – they can meet multiple times in that 30-day period without having to make the findings at every meeting.

But what if more than 30 days elapse between meetings? This may occur if a legislative body meets only intermittently, such as quarterly. Also, a meeting might get cancelled (which is especially likely during the holiday season). Likewise, if, for example, the legislative body meets only once a month on the “second Tuesday of the month”, and any particular month has 5 Tuesdays, you might have as many as 34 days between meetings, rather than the maximum of 30.

A plain reading of the statute means that *every* time a legislative body meets after the first such meeting, it must have a meeting within 30 days – even if the only item on the agenda is to determine the need to meet remotely. This is the safest route, given that this complies with the letter of the law.

But some cities are likely to find this impractical. Did the legislature truly intend to require legislative bodies to call a meeting for the sole purpose of preserving the right to future remote meetings? Courts are reluctant to attribute to the Legislature an intent to create “an illogical or confusing scheme.”¹⁰ If a city is willing to accept the legal risk for these situations, it can take the position that the statute was meant to still allow remote meetings if more than 30 days had passed, provided that at the very first meeting since the last time the findings were made, the legislative body makes the requisite findings. That is, the legislature did not mean what it said, and that the 30-day language was meant to help, rather than hinder the operation of local government.

¹⁰ *Landrum v. Superior Court*, 30 Cal.3d 1, 9 (1981). *Friedman v. City of Beverly Hills* (1996) 47 Cal. App. 4th 436 [Strict construction does not mandate unreasonable or absurd interpretations which frustrate the apparent intent of the Legislature].

In support of this position, the city could point out that the drafters failed to consider that by using the phrase “legislative bodies,” the text of the statute taken literally applies to all “legislative bodies” associated with an entity (e.g., Planning Commission) rather than just the primary legislative body (e.g., City Council) – they assumed that City Councils meet at least once a month. In making that determination, the legislature made the confusing (accidental?) decision that rather than allowing the City Council to make the decision on behalf of all the City’s legislative bodies, every legislative body must make that decision itself. This confusing scheme might be one piece of evidence that the legislature only intended the statute to apply to City Councils.

In short, the city could argue that the legislature did not mean what it said – the problem with this position, of course, is that it is contrary to the plain wording of the statute. Courts tend to look first to the letter of the law, and only look to the purpose of the law if the court determines that the statute is unclear.¹¹

As a practical matter, if a city intends to conduct meetings remotely, the city should consider adding to every agenda for every legislative body (or just the City Council?) a consent calendar item to reaffirm the findings described above, which are required to allow the remote meetings. Otherwise, the city runs the risk of forgetting to include the reaffirmation on any particular meeting agenda. Even if the city were to closely track the 30-day period, it would be easy to go beyond 30 days. Some months have five Tuesdays. Some months have 31 days. Sometimes meetings are cancelled.

2. “New” Rules Which Will Not Change How Most Cities Have Been Conducting Remote Meetings

The rest of the requirements within AB 361 put into law what most cities were already doing in practice.

Noticed Public Meetings: A remote meeting must be noticed and allow members of the public to access the meeting and the agenda. The notice of the meeting must state how the public can access the meeting and offer public comment. The agenda must “identify and include an opportunity for all persons to attend via call-in or via an internet-based service option.” It is not required that the agenda be posted at the location of each public official participating in the meeting.

Due Process: Although this was already required pursuant to the common law, it is now a statutory requirement that “the legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.” This means, for example, in a quasi-judicial proceeding (e.g., hearing on a conditional use permit), the city must ensure that the applicant is given an opportunity to be heard, and to respond in real time to all evidence presented during the hearing. Likewise, all members of the public with a property interest or a liberty interest (e.g., neighbors commenting on a

¹¹ *Building Industry Assn. v. City of Camarillo* (1986) 41 Cal.3d 810, 818 [when the language of a statute is clear, there is no room for interpretation].

conditional use permit) likewise have a right to be heard. If the applicant or those immediately affected by the project are unable to hear or to participate in the meeting, depending upon the facts, this may constitute a due process violation, and the meeting should be suspended or delayed until full participation may once again occur.

Broadcasting Disruptions: If there is a disruption which prevents 1) the broadcasting of the meeting to the public or 2) which is “within the local agency’s control which prevents members of the public from offering public comments using the call-in option or internet-based service option”, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or via the internet-based service option is restored. If, for example, a sole member of the public is having their own isolated technical difficulties such that they are unable to offer public comment, because this is not under the city’s control, the city is not required to delay the meeting (unless that person has due process rights, as described above, which might require a delay).

Public Comments: The local agency cannot require public comments to be submitted in advance of the meeting, and must allow the public to address the local agency in real time. It is not required that the local agency provide a physical location from which the public may attend or comment.¹²

Registration to Comment: If the city uses a third-party internet website or other on-line platform (e.g., Zoom), and the third-party platform requires registration to log in to the meeting, the third-party platform may require them to provide that login information.

Timed Comments: Local agencies cannot close a timed public comment “until that timed public comment period has elapsed.” This rule is best interpreted as meaning that the city cannot have the practice of limiting public comment to only those who initially “raised their hands” to speak. Rather, the city must allow people to add themselves to the public commenting queue during the period in which other members of the public are commenting. For cities that do not limit public speakers to a specific amount of time, they are required to “allow a reasonable amount of time per agenda item” to allow public comment, to register, and to be recognized for public comment.

III. CONCLUSION

With one main exception, cities that were meeting remotely were already complying with the majority, if not all, of the procedures of the new law. The main difference is that now, to meet remotely, the legislative body must make an initial determination of whether “*as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.*” A simple motion, approved by majority vote would be sufficient to make this initial finding. As described on page 2 of this memorandum, this finding is but one of three ways to initially participate, although it is recommended as the easiest way to guarantee legal compliance. Such motion could be on the consent calendar.

¹² Government Code § 54953(e)(2)(B).

If the legislative body has made that initial determination to conduct remote meetings, the simplest course of action thereafter is for each subsequent meeting (until there is no longer a desire to meet remotely), the legislative body approve a consent calendar item to make the legally required finding described in subsection (e)(3), to thereby allow that legislative body to continue to meet remotely. Such subsequent consent calendar agenda description could state the following:

Staff Recommendation: Find as follows: “The [insert name of legislative body] reconsidered the circumstances of the state of emergency declared by the Governor and at least one of the following is true: (1) The state of emergency, continues to directly impact the ability of the members of this legislative body to meet safely in person; and/or (2) State or local officials continue to impose or recommend measures to promote social distancing.”

Although it is not legally required, some cities may prefer that both the initial determination, and all subsequent determinations be made via resolution of that legislative body. If this is the desire of the city, attached as **Exhibit A** is a model resolution for the initial determination. **Exhibit B** is a model resolution for each subsequent determination. The resolutions could also be approved via the consent calendar.

Should you have any questions or comments, feel free to contact your City Attorney or Scott E. Porter at (310) 666-8893.

EXHIBIT A – MODEL RESOLUTION FOR INITIAL MEETING

RESOLUTION NO. ____

A RESOLUTION OF THE [*NAME OF LEGISLATIVE BODY*] OF THE CITY OF _____ MAKING THE LEGALLY REQUIRED FINDINGS TO AUTHORIZE THE CONDUCT OF REMOTE “TELEPHONIC” MEETINGS DURING THE STATE OF EMERGENCY

WHEREAS, on March 4, 2020, pursuant to California Gov. Code Section 8625, the Governor declared a state of emergency;

WHEREAS, on September 17, 2021, Governor Newsom signed AB 361, which bill went into immediate effect as urgency legislation;

WHEREAS, AB 361 added subsection (e) to Section 54953 to authorize legislative bodies to conduct remote meetings provided the legislative body makes specified findings;

WHEREAS, as of September 19, 2021, the COVID-19 pandemic has killed more than 67,612 Californians;

WHEREAS, social distancing measures decrease the chance of spread of COVID-19;

WHEREAS, it is appropriate for this body to make the findings specified in subsection (e)(1) of section 54953, to thereby authorize this body to meet remotely.

NOW, THEREFORE, IT IS RESOLVED by the [*name of legislative body*] of the City of _____ as follows:

1. This legislative body finds that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2021 by the following roll call vote:

AYES:

NOES:

ABSENT:

Name: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

Name: _____

Title: _____

Name: _____

Title: _____

EXHIBIT B – MODEL RESOLUTION FOR SUBSEQUENT MEETINGS

RESOLUTION NO. ____

A RESOLUTION OF THE [*NAME OF LEGISLATIVE BODY*] OF THE CITY OF _____ MAKING THE LEGALLY REQUIRED FINDINGS TO CONTINUE TO AUTHORIZE THE CONDUCT OF REMOTE “TELEPHONIC” MEETINGS DURING THE STATE OF EMERGENCY

WHEREAS, on March 4, 2020, pursuant to California Gov. Code Section 8625, the Governor declared a state of emergency;

WHEREAS, on September 17, 2021, Governor Newsom signed AB 361, which bill went into immediate effect as urgency legislation;

WHEREAS, AB 361 added subsection (e) to Section 54953 to authorize legislative bodies to conduct remote meetings provided the legislative body makes specified findings;

WHEREAS, as of September 19, 2021, the COVID-19 pandemic has killed more than 67,612 Californians;

WHEREAS, social distancing measures decrease the chance of spread of COVID-19;

WHEREAS, this legislative body previously adopted a resolution to authorize this legislative body to conduct remote “telephonic” meetings;

WHEREAS, Government Code 54953(e)(3) authorizes this legislative body to continue to conduct remote “telephonic” meetings provided that it has timely made the findings specified therein.

NOW, THEREFORE, IT IS RESOLVED by the _____ of the City of _____ as follows:

1. This legislative body declares that it has reconsidered the circumstances of the state of emergency declared by the Governor and at least one of the following is true: (a) the state of emergency, continues to directly impact the ability of the members of this legislative body to meet safely in person; and/or (2) state or local officials continue to impose or recommend measures to promote social distancing.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2021 by the following roll call vote:

AYES:

NOES:

ABSENT:

Name: _____

Title: _____

ATTEST:

APPROVED AS TO FORM:

Name: _____

Title: _____

Name: _____

Title: _____

From: [Annemarie](#)
To: [Norvell, Bernie](#); [Morsell-Haye, Jessica](#); [Peters, Lindy](#); [Albin-Smith, Tess](#); [Rafanan, Marcia](#)
Cc: [Miller, Tabatha](#); [Lemos, June](#)
Subject: public comment item 5c, 9-27-2021
Date: Monday, September 27, 2021 5:51:09 PM

Dear Council members,

Does it mean that it is not possible anymore to attend live meetings? Is that due to our governor? Do Councils have a chance to decide on that or not?

Thanks, Annemarie Weibel

Text:

This legislative body finds that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 21-514

Agenda Date: 9/27/2021

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Consent Calendar

Agenda Number: 5D.

Approve Third Amendment to City Manager Employment Agreement

The City Council conducted a performance evaluation of the City Manager on August 30, 2021, and unanimously agreed that the City Manager's performance met or exceeded expectations for ten performance factors. The Council also agreed to increase the City Manager's compensation consistent with cost of living increases received by City staff for fiscal year 2020-21 and 2021-22 . The third amendment to the City Manager contract also cleans up provisions from the first amendment related to the City Manager's voluntary reduction in salary in response to the pandemic and revises the reference to "Columbus Day" to "Indigenous Peoples' Day."

**THIRD AMENDMENT TO
CITY MANAGER EMPLOYMENT AGREEMENT**

This Third Amendment to City Manager Employment Agreement ("Agreement") is entered into by and between the City of Fort Bragg ("City") and Tabatha Miller ("City Manager"), and shall be effective as of August 1, 2021. Collectively, City and City Manager are referred to as the "Parties."

WHEREAS, on February 14, 2018, City and City Manager entered into an Agreement whereby the City Manager was employed by the City to serve as its City Manager; and

WHEREAS, on July 1, 2019, the Parties to the Agreement entered into a new Employment Agreement modifying certain terms of the Agreement; and

WHEREAS, the City Manager volunteered to reduce her annual salary by \$10,000, which change was reflected in the First Amendment to City Manager Employment Agreement dated June 4, 2020; and

WHEREAS, the Parties agreed in a Second Amendment to the Agreement dated August 2, 2020, that the City Manager's annual base salary should be reinstated to its original amount due to her additional responsibilities and duties; and

WHEREAS, the Parties desire to amend the Agreement a third time to increase and clarify certain compensation terms.

NOW, THEREFORE, for the aforementioned reasons, the Parties hereby amend the Agreement as follows:

1. The reference to "Columbus Day" in Section (6) paragraph (2) is renamed "Indigenous Peoples' Day."
2. Paragraph (5)(C)(1), as amended by the First Amendment to the Agreement, is hereby replaced with the original language from the Agreement as follows:

In the event the City Manager is terminated by the City Council during such time that the City Manager is willing and able to perform the City Manager's duties under this Agreement, the City shall pay the City Manager a lump sum cash payment equal to the lesser of (a) the actual number of months' salary remaining on the current term of employment and the cash equivalent of health (medical, dental and vision) benefits for that same period, or (b) six (6) months' base salary and cash equivalent of health (medical, dental and vision) benefits then in effect as provided in Section 4 above. It is the intention of the parties that this paragraph complies with the requirements of Government Code Section 53260 et seq. In the event of any conflict between this provision and those code sections, the terms of those code sections shall govern the contractual relationship between the employer and employee.

3. Paragraph (5)(F)(1), as amended by the First Amendment to the Agreement, is hereby replaced with the original language from the Agreement, as follows:

On separation from City employment, the City Manager shall be paid for all unused accrued leave allowances provided in Section 4.B. above. Accumulated leave balances shall be paid at the City Manager's monthly base salary rate at the effective date of separation.

4. Paragraph (4)(A)(1) is hereby amended to provide as follows:

The annual base salary for the position of City Manager shall be \$158,707.00. This salary may be increased by amendment to this Agreement.

5. Paragraph (4)(A)(4) is hereby amended to provide as follows:

Deferred Compensation. The City shall contribute \$7,615.00 annually to City Manager's 457 deferred compensation plan through equal payments of \$292.88 each pay period.

6. Except as expressly amended herein, all terms of the Employment Agreement between City and City Manager dated July 1, 2019, as amended, are hereby reaffirmed.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment the day and year first written above.

Dated: _____

By _____
Bernie Norvell, Mayor
City of Fort Bragg

Dated: _____

By _____
Tabatha Miller
City Manager



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 21-489

Agenda Date: 9/27/2021

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Committee Minutes

Agenda Number: 5E.

Receive and File Minutes of the April 14, 2021 Finance and Administration Committee Meeting



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Meeting Minutes Finance and Administration Committee

Wednesday, April 14, 2021

4:00 PM

Via Video Conference

MEETING CALLED TO ORDER

Chair Albin-Smith called the meeting to order at 4:00 PM

ROLL CALL

Present: 2 - Tess Albin-Smith and Marcia Rafanan

1. APPROVAL OF MINUTES

1A. [21-154](#) Approve Minutes of February 10, 2021

A motion was made by Chair Albin-Smith seconded by Chair Rafanan, that these Committee Minutes be approved for Council review. The motion carried by a unanimous vote.

2. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Public Comment:
Jacob Patterson

3. CONDUCT OF BUSINESS

3A. [21-150](#) City Council FY 2021-22 Budget Priorities

The Committee reviewed the report prepared for this item. The committee report was presented by City Manager Tabatha Miller who further explained the information in report and discussed the past and current Council Financial Goals.

Public Comment:
Jacob Patterson

Discussion: There was much discussion and the committee proposed several changes to the list of the Budget Goals. It is important to be realistic and acknowledging the top priorities for the next fiscal year. There was several questions about Other Post Employment Benefits (OPEB) expenses and California Public Employees' Retirement System (CalPERS) obligations. The committee also stated that the goals that are not on the top 5 can stay but those will not be prioritized.

Committee directed Staff to rank the Council Financial Goals in order of priority as follows:

- 1) Adopt a balanced budget
- 2) Provide for additional contributions to CalPERS in order to pay the unfunded liability off earlier than 30 years
- 3) Maintain operating reserve and litigation reserve

- 4) Provide funding for emergency reserves
- 5) Maintain current level of service (no staff layoffs, no program cuts)

3B. [21-156](#) Receive Reportable Items Report: Includes Treasury Report, Approved Intradepartmental Budget Transfers, Contracts Under \$25k Approved by the City Manager, Contract Change Orders Not Exceeding 10% of Contract, PRA Request Report, and Disbursements Listing

The Committee reviewed the reports prepared by the City Finance Department staff for this item. The reports were presented by Senior Government Accountant Isaac Whippy who summarized the Treasurer's Report, Disbursements Report, Public Records Request (PRA) Report, and Contracts under \$25k for quarter two (Q2).

Public Comment:

* None.

Discussion:

The Committee and staff discussed various items about the reports. Due to COVID-19 the economy has seen a decrease but it is slowly coming back. We continue to have a fairly conservative investment portfolio and the rate of return is low but steady. Other various payments were discussed.

3C. [21-157](#) Committee Requests

The Committee reviewed the reports prepared by the City Finance Department staff for this item. The reports were presented by Senior Government Accountant Senior Government II Isaac Whippy and Accountant Laura Bianchi-Limbird and who gave an oral update on these reports.

Public Comment:

* Jacob Patterson

Discussion:

These reports were requested by the Committee members. The first report was the Public Records Report and they demonstrated that compared to the previous year's requests have doubled and they now average with 30 requests a month. In total the cost of staff time since 2019 has been \$52,000. The next report presented how many Fort Bragg businesses have closed due to COVID-19 and how many new business license applications were received. A total of 106 net new business applications were received. Another item that was requested was the PG&E cost comparisons for the last years.

3D. [21-158](#) Discussion on Temporary Waiver of Water/Sewer Capacity Fees to Encourage New and Expanding Businesses

This was an oral discussion led by City Manager Tabatha Miller

Public Comment:

* None.

Discussion:

The Committee and staff discussed the Water/Sewer capacity fees and possibly waiving or

deferring these fees. This would allow for storefronts that have not been a high water/sewer user before to have an opportunity to open with less or deferred fees. It was discussed that this program would not be retroactive and it can be an annual waiver. It was decided that this item will be refined and brought back to this committee before going you City Council.

Recommendation:

It was recommended that 100% of the fees be waived for restaurants in the Central Business District and for those businesses not residing in the Central Business District can receive a 25% reduction in capacity fees.

3E. [21-160](#) Receive Oral Update from Staff on Departmental Activities

Department Update

Isaac Whippy reported on the following:

FY 21-22 Budget is being prepared. The Budget Workshop will be held on May 17, 2021.

Currently recruiting for Finance Technician.

Business License renewals are 85% renewed.

The Utility Assistance Program will start May 1st and can help up to \$500 of assistance for all utilities.

Water Conservation efforts are going to start soon.

4. MATTERS FROM COMMITTEE / STAFF

None

ADJOURNMENT

Chair Albin-Smith adjourned the meeting at 5:38 PM.



City of Fort Bragg

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Text File

File Number: 21-490

Agenda Date: 9/27/2021

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Minutes

Agenda Number: 5F.

Receive and File Minutes of the August 12, 2021 Public Works and Facilities Committee Meeting



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Meeting Minutes Public Works and Facilities Committee

Thursday, August 12, 2021

3:00 PM

Town Hall, 363 N. Main Street

MEETING CALLED TO ORDER

Committee chair Lindy Peters called meeting to order at 3:00 pm.

ROLL CALL

Staff in attendance included, Public Works Director John Smith and Sandy Arellano.

Present: 2 - Lindy Peters and Tess Albin-Smith

PLEASE TAKE NOTICE

Committee Clerk Sandy Arellano read the "Please Take Notice" clause.

1. APPROVAL OF MINUTES

1A. [21-431](#) Approve Minutes of June 10, 2021

Meeting minutes approved as presented by committee members.

2. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Two comments on non agenda items were received from:

- 1) Nathan Orsi
- 2) Paul Clark

3. CONDUCT OF BUSINESS

3A. [21-430](#)

Provide Oral Report to Committee on Public Works Departmental Updates and Activities on Items of Interest

Director John Smith provided an updated oral report to committee members regarding departmental activities related to; currently no reservoir water is being used. Current additional water emergency projects and available funding from state, updates, timelines and costs. Other updates regarding free water conservation devices, new water meter change outs, Pudding Creek Water Line, Water Treatment Plant Rehab, Tank #2 Rehab. Mendocino County to assist with additional water storage project grant writing.

Maintenance crew responding to water leaks in a timely matter. Water customers are to contact Public Works if they are experiencing a leak, PD dispatch phone number to be called for after office hour call outs.

New garbage cans installed in the Downtown District. Much needed new hires in Public Works field staff; interviews are scheduled. Status of the Biosolids Dryer was provided. New Public Works equipment to be purchased using subsidized funding from USDA grants.

4. MATTERS FROM COMMITTEE / STAFF

Committee member Albin-Smith requested a status on the ground shallow project at Redwood Elementary, street repair at Bush Street and Mc Pherson Street, and Noyo Camp river diversion. Director Smith responded.

Chair Lindy Peters inquired on a Water Enterprise Fund, reserve funds for emergencies and Pudding Creek Water Main Projects' water line size. Director Smith responded.

Chair Lindy Peters also requested to add Cedar Street sewer and water connections to the next Public Works and Facilities meeting agenda.

ADJOURNMENT

Meeting adjourned at 3:38 pm.



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 21-510

Agenda Date: 9/27/2021

Version: 1

Status: Consent Agenda

In Control: City Council

File Type: Minutes

Agenda Number: 5G.

Approve Minutes of Special Meeting of September 20, 2021



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Meeting Minutes Special City Council

*THE FORT BRAGG CITY COUNCIL MEETS CONCURRENTLY AS
THE FORT BRAGG MUNICIPAL IMPROVEMENT DISTRICT NO. 1
AND THE FORT BRAGG REDEVELOPMENT SUCCESSOR
AGENCY*

Monday, September 20, 2021

6:00 PM

Via Video Conference

Special Meeting

CALL TO ORDER

Mayor Norvell called the meeting to order at 6:04 PM, all Councilmembers appearing via video conference.

ROLL CALL

Present: 4 - Mayor Bernie Norvell, Vice Mayor Jessica Morsell-Haye, Councilmember Tess Albin-Smith and Councilmember Lindy Peters

Absent: 1 - Councilmember Marcia Rafanan

1. PUBLIC COMMENTS ON: (1) NON-AGENDA, (2) CONSENT CALENDAR & (3) CLOSED SESSION ITEMS

(1) None. (2) None. (3) None.

2. CONSENT CALENDAR

Approval of the Consent Calendar

A motion was made by Councilmember Peters, seconded by Vice Mayor Morsell-Haye, to approve the Consent Calendar. The motion carried by the following vote:

Aye: 4 - Mayor Norvell, Vice Mayor Morsell-Haye, Councilmember Albin-Smith and Councilmember Peters

Absent: 1 - Councilmember Rafanan

2A. [21-488](#)

Adopt City Council Resolution Confirming the Continued Existence of a Local Emergency in the City of Fort Bragg

This Resolution was adopted on the Consent Calendar.

Enactment No: RES 4447-2021

2B. [21-493](#)

Approve Minutes of September 13, 2021

These Minutes were approved on the Consent Calendar.

3. CONDUCT OF BUSINESS

Councilmember Rafanan joined the meeting at 6:08 PM.

- 3A. [21-500](#)** Receive Presentation from NHA Financial Advisors on the Proposed 2021 Taxable Lease Revenue Bonds (CalPERS UAL Restructuring & Site Acquisition)

City Manager Miller introduced Michael Meyer and Leslie Bloom from NHA Advisors. Mr. Meyer gave a presentation to City Council on the proposed revenue bonds to finance CalPERS Unfunded Accrued Liability and for funding \$3.5 million as part of the possible acquisition of the southern portion of the Mill Site.

Public Comment was received from Andrew Jordan.

Direction: After brief discussion, Councilmembers directed staff to move forward with the recommended action and present City Council with a resolution for approval of financing, legal documents, Preliminary Official Statement and pension funding policy at the meeting of October 12, 2021.

This matter was referred to staff for further action.

- 3B. [21-503](#)** Update and Presentation on the Fort Bragg Digital Infrastructure Project

City Manager Miller gave a presentation on the recently issued Fort Bragg Digital Infrastructure Plan which evaluated the feasibility of establishing a City-owned Broadband Utility to provide reliable and affordable connectivity to City residents and businesses.

Public Comment was received from Andrew Jordan and Jacob Patterson.

Direction: Council directed staff to advance the project by pursuing grants and other financing to fund the project, working with Mendocino Community Network (MCN) to develop an operating model and agreement, and preparing a Request for Proposals for detailed design of the network.

This matter was referred to staff for further action.

4. CLOSED SESSION

Mayor Norvell recessed the meeting at 7:41 PM; the meeting reconvened to Closed Session at 7:45 PM.

- 4A. [21-501](#)** CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: One (1) Case

- 4B. [21-502](#)** CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9; Name of Case: Kashiwada v. City of Fort Bragg

Mayor Norvell reconvened the meeting to Open Session at 8:32 PM and reported as follows: Regarding Item 4A, the City Council gave direction to initiate a civil action and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so

would jeopardize the City's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

ADJOURNMENT

Mayor Norvell adjourned the meeting at 8:32 PM.

BERNIE NORVELL, MAYOR

June Lemos, CMC, City Clerk

IMAGED (_____)



City of Fort Bragg

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Text File

File Number: 21-497

Agenda Date: 9/27/2021

Version: 1

Status: Business

In Control: City Council

File Type: Ordinance

Agenda Number: 8A.

Receive Report and Consider Adoption of Urgency Ordinance No. 972-2021 Placing a 45-Day Moratorium on the Approval of Applications and Permits for Cannabis Dispensaries in the Inland Zoning Area



AGENCY: City Council
MEETING DATE: September 27, 2021
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
EMAIL ADDRESS: tmiller@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of Urgency Ordinance No. 972-2021 Placing a 45-Day Moratorium on the Approval of Applications and Permits for Cannabis Dispensaries in the Inland Zoning Area

ISSUE:

On January 25, 2021, the City Council conducted a public hearing and considered the appeal of the Planning Commission's denial of Minor Use Permit 4-20 (MUP 4-20) on the proposed Sunshine Holistic Cannabis Microbusiness at 144 N. Franklin Street. Because a majority of the Councilmembers presiding over the appeal were unable to reach consensus, the Council failed to take action to either uphold the Planning Commission's denial of MUP 4-20 or to overturn the denial and approve MUP 4-20 as requested by the appeal.

On September 1, 2021, the City Council conducted a public hearing and considered the appeal of the Planning Commission's denial of MUP 1-21 on the proposed Sunshine Holistic Cannabis Dispensary at 144 N. Franklin Street. Similar to the January hearing, the City Council failed to take action on the matter because a majority consensus was not reached and the Planning Commission denial of the MUP stood.

During the Administrative, Planning Commission, and the City Council public hearings, Commissioners, Councilmembers and members of the public raised issues regarding residential uses near the proposed cannabis businesses. The Planning Commission found that the proposed cannabis dispensary for MUP 1-21 was incompatible with the mixed-use neighborhood and therefore was not compatible with the existing or future land uses. Two Councilmembers made similar comments during the deliberations on the appeal on September 1, 2021.

During the appeal proceedings and other discussions about cannabis regulation in the City, Councilmembers raised the issue of whether a maximum number of cannabis dispensaries should be revisited. The concern appears to stem from public comments on whether an overconcentration of cannabis dispensaries could result from the lack of regulation on the number allowed in the Central Business District (CBD) or the lack of regulation on proximity to other cannabis dispensaries.

Additionally, the proximity to a potential "youth center" at the City Hall Gymnasium at 213 East Laurel Street was raised during the September 1, 2021 proceedings. As the dispensary regulations are currently written, this is an unaddressed issue. The Planning Commission's recommendation on August 28, 2019 to the City Council on the ordinance allowing and regulating cannabis dispensaries struck any reference to sensitive uses such as schools, day care centers, or youth centers. There was an indication that the minor use permit

process would provide a case-by-case evaluation of a dispensary's proximity to a youth center, although youth center was not defined. Instead of removing a buffer, this action resulted in the ordinance adopted by the City Council defaulting to the state requirement for a 600-foot buffer between schools, day care centers, or youth centers, as measured from parcel line to parcel line.

The concerns with residential uses in close proximity to cannabis uses, concerns with possible future overconcentration of cannabis dispensaries, and the lack of a definition for "youth center" to clearly establish when the 600-foot buffer would apply raises considerations for protecting the public health, safety, and welfare. Staff is recommending that the City Council consider initiating a review of the City's existing Cannabis Business Regulations and allowable land uses to ensure consistency with the intent of City Council and public health, safety and welfare.

To protect the public health, safety, and welfare, while a review is conducted and potential revisions made to the City's existing cannabis ordinance, staff is recommending that the City Council issue a 45-day moratorium on the approval of applications and permits for cannabis dispensaries in the Inland Zoning District.

ANALYSIS:

Urgency Ordinances

Under [California Government Code Section 65858](#), a city or county may adopt an interim ordinance to temporarily prohibit certain land uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the City Council and/or Planning Commission is considering or studying. The temporary prohibition or moratorium provides municipalities time to study the impact of certain activities and develop appropriate regulations, if deemed necessary.

An urgency ordinance can be passed without advance notice to the public and is effective immediately for up to 45-days but must be approved by a four-fifths vote of the legislative body. The urgency ordinance may be extended for a total period of two years as set forth in the IMPLEMENTATION/TIMEFRAMES section of this report. Any extension of the moratorium must also be approved by a four-fifths vote of City Council.

Current Application for Cannabis Dispensary in the CBD

The City has received a completed application for a cannabis dispensary located at 362 N. Franklin Street, also known as the "old Sears building." This location is across the street from the City Hall Gymnasium at 213 East Laurel Street. Whether or not the City Hall Gymnasium is a "youth center" has not been determined but a review of the rented use of that facility in 2019 indicates that 79% of the rental use was for youth-oriented activities. If you look at the whole facility including City Hall, the youth-oriented activities account for only an estimated 19% of the activities in the building.

A review of the August 28, 2019 Planning Commission meeting indicates that the intention in eliminating the reference to "sensitive uses" and more specifically the "youth center" was to eliminate the 600-foot buffer requirement and instead rely on the case-by-case review of

each minor use permit application. While a use permit is arguably the most effective way to determine if uses are incompatible, it may lead to a more expensive and lengthy process for the applicant as demonstrated in the Sunshine Holistic appeals. Defining the buffer that the City Council would like to apply, further defining “youth center,” and more specifically the City Hall Gymnasium, would make it more predictable for potential permit applicants. This is potentially more “business friendly” than the more unpredictable case-by-case approach, especially since a Minor Use Permit does not get a hearing unless requested and thus may slip through the public process. The ability to inform an applicant prior to a public hearing that the proposed business will not be allowed is certainly preferred by staff and the applicant.

Proposed Ordinance

Similar to the Moratorium on Formula Businesses in the Inland Zoning Area, the proposed ordinance would place a hold on the approval of any cannabis dispensary in the Inland Zoning Area. This would allow staff and the City Council to study and consider updates to the existing Cannabis Business Regulations to:

- resolve potential conflicts with residential uses;
- define what constitutes a “youth center” and if a buffer of more or less than 600 feet is appropriate for Fort Bragg;
- clarify cannabis microbusinesses;
- resolve concerns about overconcentration of cannabis dispensaries in the CBD (a limit on the number allowed or a required buffer between dispensaries); and
- consider whether cannabis dispensaries should be limited in where they are allowed in the CBD or any other district where allowed.

Although not included in Cannabis Business Regulations, the City Council could also revisit whether or not to propose a tax on cannabis businesses to the City’s voters.

In researching this potential Council action, it became apparent that a number of California cities have passed cannabis ordinances allowing businesses and then revisited those ordinances to refine the regulations after more information is gained on the actual impacts or lack of impacts from cannabis businesses.

POSSIBLE ACTION(S):

1. City Council, upon four-fifths vote, may waive the reading and adopt by title only an Urgency Ordinance of the City of Fort Bragg placing a temporary moratorium on the approval of applications and permits for cannabis dispensaries in the Inland Zoning Area.
2. Do not adopt an Urgency Ordinance of the City of Fort Bragg placing a temporary moratorium on the approval of applications and permits for cannabis dispensaries in the Inland Zoning Area.
3. Provide staff a proposed definition of “youth center” and/or in the alternative, provide staff direction on an alternative to the 600-foot buffer required by state law.
4. Provide staff alternative direction.

FISCAL IMPACT:

The impact of the 45-day temporary moratorium on cannabis dispensaries to the City's revenue is likely minimal.

GREENHOUSE GAS EMISSIONS IMPACT:

N/A

CONSISTENCY:

The City's current Inland General Plan provides support for regulating cannabis businesses. The current purpose statement from Element 6 of the Inland General Plan:

A. Purpose

The Community Design Element establishes goals, policies, and programs to preserve and enhance Fort Bragg's authentic, small town character. The community is defined in part by its isolated location on the magnificent coastline of Mendocino County. Its sense of place derives from its heritage as a regional center for the timber and fishing industries. As the economy evolves to a more tourism and service-based economy, the community has acknowledged the importance of maintaining the historic identity of downtown and the integrity of the residential neighborhoods, while enhancing views and access to the coastline and planning for continued growth and development.

The Community Design Element is concerned primarily with the visual quality of the City, or what residents and visitors see. The City's appearance is essential to the quality of life in Fort Bragg. Visual quality and amenities go hand-in-hand with long-term economic development strategies, and strengthen the stability and desirability of the community. To be attractive to residents, visitors, and businesses, the City must be concerned about its appearance, physical character, and livability. Existing residential real estate values and the desirability of businesses that depend on tourism are closely tied to the visual character of the community.

Policies and Goals from the City's General Plan include:

Policy LU-3.1 Central Business District: Retain and enhance the small-scale, pedestrian friendly, and historic character of the Central Business District (CBD).

Policy LU-3.2 Mixed Uses: Support mixed use development (i.e., a combination of residential and commercial uses) in the Central Business District that does not conflict with the primary retail function of this area.

Policy LU-3.4 Encourage Infill Development: Encourage infill development of vacant and underdeveloped land in the Central Business District and adjacent commercial areas before amending the Inland General Plan and rezoning to obtain additional commercial land elsewhere.

Policy LU-3.6 Re-Use of Existing Buildings: Encourage the adaptive re-use and more

complete utilization of buildings in the Central Business District and other commercial districts.

Policy LU-4.3 Standards for Commercial Uses in Residential Areas: *Commercial uses in and adjacent to residential areas shall not adversely affect the primarily residential character of the area.*

Goal C-5 *Regard the quality of life in Fort Bragg and maintaining community identity as more important than accommodating through-traffic.*

Policy C-5.1 Community Priorities for Transportation Improvements: *Place a higher priority on maintaining a sense of place and enhancing the attractiveness of the Central Business District than on efficient traffic flow and movement.*

Policy CD-2.1 Adaptive Reuse: *Facilitate the adaptive reuse of existing older buildings in the Central Business District.*

Policy CD-2.2 Pedestrian Activity: *Encourage increased pedestrian movement and activity in the Central Business District.*

Policy CD-2.3 Economic Vitality: *Continue to support the economic diversity and vitality of downtown businesses.*

Policy CD-2.5 Strengthen the Distinctive Identity of the Central Business District: *Strengthen the distinctive identity and unique sense of place of the Central Business District.*

Policy CD-6.1 Protect and Preserve Buildings and Sites with Historic and Cultural Significance to the Community.

IMPLEMENTATION/TIMEFRAMES:

An urgency ordinance may remain in effect for only 45 days, unless it is extended by another four-fifths vote. Ten days prior to the expiration of the urgency ordinance or any extension, City Council will need to issue a written report describing the measure taken to alleviate the condition that led to the adoption. After notice and a hearing, a local government can extend the ordinance for either ten months and 15 days, with the option to extend it once more for an additional one-year, or once for 22 months and 15 days. Either option equates to an extension of up to two years and requires the four-fifths vote. The legislative body may rescind the urgency ordinance prior to its stated termination.

ATTACHMENTS:

1. Proposed Ordinance

NOTIFICATION:

1. Economic Development Planning, **Notify Me subscriber list**
2. Cannabis Legislation, **Notify Me subscriber list**

3. Hrant Ekmekjian
4. Danny Schultz
5. Brandy Moulton
6. Brittany Biesterfeld
7. Chelsea Haskins

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN UNCODIFIED URGENCY
ORDINANCE ESTABLISHING A 45-DAY
MORATORIUM ON APPROVAL OF
APPLICATIONS AND PERMITS FOR
CANNABIS DISPENSARIES IN THE
INLAND ZONING AREA**

**URGENCY ORDINANCE
ORDINANCE NO. 972-2021**

WHEREAS, Government Code section 65858 allows a city to adopt, as an urgency measure, an interim ordinance for the immediate preservation of the public safety, health and welfare without following the procedures otherwise required prior to adoption of a zoning ordinance; and

WHEREAS, the City of Fort Bragg (“City”) previously adopted ordinances governing cannabis businesses, including dispensaries and manufacturing; and

WHEREAS, on November 8, 2016, the electorate of the State of California approved Proposition 64 (“Prop 64”) which enacted the Adult Use of Marijuana Act (“AUMA”), to be codified in California Health and Safety Code at various sections and in California Business and Professions Code at various sections. The AUMA allows adults 21 and over to use, possess, and cultivate limited amounts of marijuana, establishes a state licensing and regulatory scheme for marijuana businesses serving the recreational market; and expressly allows local jurisdictions to prohibit outdoor cultivation of marijuana for personal use, to regulate indoor cultivation of marijuana for personal use, and to prohibit all non-medical and recreational marijuana businesses from locating and operating within their jurisdictions; and

WHEREAS, on June 27, 2017, the Governor approved Senate Bill 94 which combined the regulatory schemes for Medical Marijuana Regulation and Safety Act (“MMRSA”) and AUMA into a single, comprehensive regulatory scheme known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”); and

WHEREAS, on February 25, 2019, the City Council of the City of Fort Bragg (“City Council”) sought to establish rules and regulations by which cannabis businesses may be permitted by considering an ordinance regulating retail, laboratory testing, manufacturing, and distribution cannabis businesses and accessory uses; and

WHEREAS, through multiple public meetings, the Public Safety Committee, Fort Bragg Police Department, and City staff have received input from citizens and discussed various options for permitting cannabis businesses; and

WHEREAS, on November 21, 2019, the City Council of the City of Fort Bragg (“City Council”) adopted Ordinance 953-2019 which established rules and regulations by which cannabis dispensary businesses may be permitted; and

WHEREAS, on January 25, 2021, the City Council conducted a public hearing and considered the appeal of the Fort Bragg Planning Commission denial of Minor Use Permit 4-20 (MUP 4-20) on the proposed Sunshine Holistic Microbusiness at 144 N. Franklin Street. City Council failed to take action by a majority vote, which resulted in upholding the Planning Commission’s determination that growing, manufacturing, processing of cannabis is not a permitted use in the Central Business District and that uses (growing, manufacturing, processing of cannabis) are not accessory/subordinate to the primary use of retail; and

WHEREAS, on September 1, 2021, the City Council conducted a public hearing and considered the appeal of the Fort Bragg Planning Commission denial on Minor Use Permit 1-21 (MUP 1-21) on the proposed Sunshine Holistic Cannabis Dispensary at 144 N. Franklin Street. City Council failed to take action by a majority vote, which resulted in upholding the Planning Commission’s determination that the proposed use was not compatible with the existing and future land uses of that neighborhood and that there was not sufficient evidence that the required noticing of the Minor Use Permit, the Minor Use Permit Administrative Hearing, and the Minor Use Permit Appeal were properly posted at the property; and

WHEREAS, during the appeals of both the Sunshine Holistic Minor Use Permit applications, the City Council, the Planning Commission and members of the public raised concerns about the impact of residential uses located in or near the Central Business District (CBD) where cannabis dispensaries are allowed with an approved Minor Use Permit; concerns over the number of dispensaries allowed in the CBD and whether a maximum number should be set to avoid overconcentration of cannabis dispensaries; and the proximity of cannabis dispensaries to facilities that could be defined as a “youth center” including the City Hall gymnasium located at 213 East Laurel Street; and

WHEREAS, Chapter 9.30 Cannabis Businesses of the Municipal Code does not define “youth center” nor does the Fort Bragg Inland Land and Use Development Code define “youth center” or address it; therefore, California State law requires a 600-foot separation between youth centers and cannabis storefronts; and

WHEREAS, the City has received a completed application for a cannabis dispensary located at 362 N. Franklin Street which is directly across the street from the City Hall gymnasium located at 213 East Laurel Street and within the 600-foot buffer required by California State law; and

WHEREAS, City staff have determined that seventy-nine percent (79%) of the total hours the City Hall gymnasium located at 213 East Laurel Street was rented for activities associated with youth activities but only nineteen percent (19%) of hours for City Hall including the gymnasium are associated with youth activities. A determination by the City Council that the City hall gymnasium is a “youth center” will impact the City’s ability to permit cannabis dispensary businesses in the Central Business District and uses may be in conflict with a contemplated

general plan, specific plan or zoning proposal that the City Council is considering related to cannabis businesses; and

WHEREAS, the City intends to study whether it would be appropriate to amend how the City regulates cannabis dispensaries in the Central Business District; and

WHEREAS, approval of any cannabis dispensary in the Central Business District may conflict with future amendments to the city’s General Plan, Specific Plan or zoning code.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Findings. The City Council hereby finds as follows:

1. All the recitals, facts, findings, and conclusions set forth above in this Ordinance are true and correct.
2. This ordinance is not a “project” under the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA review. CEQA defines a “project” as including an activity directly undertaken by a public agency that “may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (Pub. Res. Code, §21065.) The proposed ordinance will not do either.

This ordinance concerns activities intended to preserve the status quo while the City considers further regulation relating to cannabis dispensaries in the Central Business District and does not constitute a “project” as defined by CEQA and will not result in a direct or reasonably foreseeable indirect physical change in the environment pending the review of overconcentration issues (Pub. Res. Code, §21065, CEQA Guidelines §§15060(c)(2)(3); 15061(b)(3); 15064(d)(3); and 15378(a).).

3. The establishment and expansion of cannabis dispensaries in the Inland Zoning Area has created a current and immediate threat to public health, safety, and welfare. Cannabis dispensaries that may be located directly adjacent to residential uses, create a potential for conflict between incompatible adjacent land uses. Cannabis dispensaries located within 600-foot of facilities that are defined as a “youth center” conflict with State law.
4. The future establishment and expansion of cannabis dispensaries and production in the Inland Zoning Area allowed with a Minor Use Permit (MUP) would further threaten public health, safety, and welfare in the Inland Zoning Area.
5. The City intends to study whether it would be appropriate to amend how the City regulates cannabis dispensaries in the Inland Zoning Area.
6. This ordinance is intended to protect the public health, safety, and welfare by prohibiting the establishment of any new cannabis dispensary use with a MUP or expansion or modification of those uses while the City studies and enacts new land use regulations. The continued establishment, expansion, and modification of these uses during this process would defeat the City Council’s objectives in studying and potentially adopting new regulations governing these uses in the area.

7. Approval of cannabis dispensary uses may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, Planning Commission or the planning department is considering or studying or intends to study within a reasonable time.
8. This ordinance promotes the public health, safety, convenience, and welfare of the City.

Section 2: Moratorium. The City of Fort Bragg declares a moratorium on the approval of applications to establish a cannabis dispensary on any parcel, which is, in whole or in part, in the Inland Zoning Area. However, the City will continue to accept and process applications for such businesses.

Section 3: Already-approved projects. This ordinance does not apply to projects for which the City has approved entitlements as of the effective date of this ordinance.

Section 4: Inconsistencies. Any provision of the City of Fort Bragg Municipal Code thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further is hereby repealed or modified to that extent necessary to affect the provisions of this Ordinance.

Section 5: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, state, or federal law, regulation, or codes dealing with life safety factors.

Section 6: Uncodified Ordinance. This Ordinance is to be uncodified.

Section 7: Immediately Effective. This Ordinance shall become effective immediately and shall remain in effect for a period of 45 days unless extended or prematurely terminated.

Section 8: Written Report. Pursuant to Government Code Section 65858(d), ten days prior to the expiration of this Ordinance or any extension of such, the City Manager shall issue a written report on behalf of the City Council describing the measures taken to date to alleviate the condition, which led to the adoption of this Ordinance.

Section 9: Certification. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law.

The foregoing Urgency Ordinance was introduced by Councilmember _____ and adopted by no less than the required 4/5 vote at a regular meeting of the City Council of the City of Fort Bragg held on September 27, 2021 by the following vote:

AYES:

**NOES:
ABSENT:
ABSTAIN:
RECUSED:**

**Bernie Norvell,
Mayor**

ATTEST:

**June Lemos, CMC
City Clerk**

**PUBLISH: October 7, 2021
EFFECTIVE DATE: September 27, 2021**

Moratorium On Cannabis Dispensaries in Inland Zoning Area

CITY COUNCIL MEETING

SEPTEMBER 27, 2021

Interim Urgency Zoning Ordinances or Moratoriums

- California Government Code Section 65858 authorizes cities and counties to adopt urgency ordinances to prevent uses of property that would violate a pending or contemplated land use measure that a city or county is studying or reviewing.
- Provides time for city or county to consider potential zoning ordinances and if appropriate adopt.
- Pending applications would not be approved during the moratorium but could continue to be processed until after the ordinance is adopted and effective.
- Requires 4/5 vote for adoption and for any extension.

Urgency Ordinance Timeline

- Initial Moratorium is only effective for 45-days.
- Prior to expiration or any extension, staff on behalf of City Council must issue a report to describe measures taken to alleviate the condition that led to adoption.
- City Council may extend the ordinance by up to ten months and 15 days, with an additional extension of 1 year, or once for 22 months and 15 days. A total of up to two years.
- City Council may rescind the ordinance at any time, prior to expiration.

Moratoriums are not Takings

- ❑ *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* 535 U.S. 302 (2002)
- ❑ Holding: Development that is paused during the process of creating comprehensive land-use plan is not a taking that requires fair compensation.
- ❑ The Tahoe Regional Planning Agency imposed two moratoriums for a total of 32 months that prevented any development in the Lake Tahoe area.

Cannabis Dispensary Considerations

- Unresolved issue of “Youth Center” and whether a buffer should be established?
- Consider a cap on the number of Cannabis Dispensaries and/or establish a limit on distance required between?
- Compatibility with residential uses or “family oriented” businesses?
- Should dispensaries be limited to Main Street?
- Does the City Council want to present the Voters with the option to tax Cannabis Businesses?
- Limitations or parameters for accessory uses and microbusinesses?
- Further limit hours of operation?

Consistency

- General Plan and Inland Land Use Code
- Council vision, policy and goals
- Original Ordinance recommended for adoption by Planning Commission and adopted by City Council unanimously
- Interpretation of ordinance was limited to 3 of 5 Planning Commissioners with no action by City Council

“Business Friendly”

- Established as a City Council Goal in 2019
- Not necessarily the need to approve all businesses within City limits
- Strategic planning is a part of land use process
- Transparency of the Land Use Codes and interpretations to potential businesses and developers about what development is allowed and where is business friendly.
- Predictability and reasonable risk assessment

Options

- Adopt a 45-day moratorium on Cannabis Dispensaries
 - In all Commercial Districts where Cannabis is allowed, or
 - Limit it to the Central Business District
- Not adopt the moratorium
- Bring back a resolution that makes a determination on whether the City Hall Gymnasium is a “youth center”
- Whether the moratorium is adopted or not, the Council can make desired changes to the existing Cannabis Dispensary Ordinance and continue forward with prior direction on the Cannabis Cultivation Ordinance

Questions?

From: [Jacob Patterson](#)
To: [Lemos, June](#); [Munoz, Cristal](#)
Cc: [Miller, Tabatha](#); [McCormick, Sarah](#)
Subject: Cannabis Retail Moratorium Agenda Item
Date: Friday, September 24, 2021 11:45:56 AM

City Council and staff,

Please consider the following when you review the proposed cannabis retail moratorium on Monday's agenda. While I certainly understand how the City came to the conclusion that we defaulted to the state's 600 foot buffer rules because we deleted any reference to the buffers from the ordinance so it is silent concerning the default buffers, I do not agree that is definitely the case. Since the adopted ordinance is technically silent on this issue, it would look like the state's default rules apply because the City did not explicitly adopt a smaller buffer area around the child-oriented uses. However, when an ordinance is silent on an issue, you can sometimes look to the legislative history to help interpret it. In this case, a strong argument could be made that we should "read in" a reduced buffer zone of zero feet as an implied component of the City's ordinance because it doesn't make sense in light of the whole ordinance nor reflect the clear intent of the Planning Commission's recommendations and City Council decision when the cannabis retail ordinance was adopted.

Moreover, the fact that The Bakery cannabis dispensary was permitted by the City on Main Street, which is within 600 feet of the old gym where weekly skate night happens--no reasonable definition or interpretation of "youth center" would exclude the old gym rec center--and literally right next door to the Noyo Center's downtown facility, also arguably a youth center, clearly shows that the City's intent by deleting the state default language of a 600-foot buffer zone around youth centers (etc.) was to adopt a smaller buffer area of zero feet from a youth center. Would it have been better ordinance drafting to explicitly include a buffer zone that is less than 600 feet? Absolutely and that is probably what should happen with any updates to the existing code language (perhaps more than zero but less than 600 feet) but that doesn't mean that the interpretation that is being presented in the staff report for Monday's agenda item is the only possible legal interpretation of our current situation. I actually submitted a public comment during the review process for MUP 1-21 (the recently denied cannabis retail application) that listed various rules of statutory interpretation that discuss these issues in detail concerning the MUP findings but those statutory interpretation rules/doctrines also apply to this situation and the legislative history is very clear that the City's intent was not to default to the state's default buffers of 600 feet and instead deal with compatibility issues on a case-by-case basis through the MUP review process. In short, although I have no issue with imposing this moratorium, it isn't clearly necessary and we can still process changes to our commercial cannabis regulations while processing applications. Applicants should be told that their results are not guaranteed and they are proceeding at their own risk, but that is always the case for discretionary permits, including use permits and minor use permits. The only certainty that can be provided to applicants at the start of an application is when a use is permitted by right or explicitly prohibited--technically, even then, you could still have minor exceptions and uncertain outcomes as happened with the formula businesses and the new regulations that could change the result for the Dollar General application for S. Franklin at Maple.

Regards,

--Jacob


September 23, 2021

RE: Urgency Ordinance No. 972-2021

Dear Mayor Norvell and Members of the Council,

I'm writing you today regarding the Urgency Ordinance to place a Moratorium on the Approval of Applications and Permits for Cannabis Dispensaries in the Inland Zoning Area. I urge you to exclude the Commercial General Zoning District from the moratorium. Perfect Union has submitted an application for a retail dispensary in the Commercial General District that meets all requirements of our current city code. There are no schools, day cares, or youth centers within 600 feet of their building. The youth center zoning buffer and definition are clearly defined by the State of California. The Council should not impede a business that will bring tax revenue and community funding into the City of Fort Bragg that is abiding by the State's laws. Please exclude the Commercial General District from the moratorium and allow Perfect Union's application to not only be processed but licensed. Thank you.

Sincerely,

DocuSigned by:

Feddali David

September 23, 2021

RE: Urgency Ordinance No. 972-2021

Dear Mayor Norvell and Members of the Council,

I'm writing I regards to Urgency Ordinance to place a Moratorium on the Approval of Applications and Permits for Cannabis Dispensaries in the Inland Zoning Area. I am asking you to exclude the Commercial General Zoning District from the moratorium. Perfect Union has submitted an application for a retail dispensary in the Commercial General District that meets all requirements of our current city code. There are no schools, day cares, or youth centers within 600 feet of their building. The youth center zoning buffer and definition are clearly defined by the State of California. The Council should not impede a business that will bring tax revenue and community funding into the City of Fort Bragg that is abiding by the State's laws. Please exclude the Commercial General District from the moratorium and allow Perfect Union's application to not only be processed but licensed. Thank you.

Warmest regards,

DocuSigned by:
Lorrie Jean Glover 
B36E954B84B54FE...
Lorrie Glover

From: [Chelsea Haskins](#)
To: [Lemos, June](#)
Subject: City Council Hearing 9/27/2021
Date: Friday, September 24, 2021 10:04:32 AM

Good morning Ms. Lemos,

I have two questions regarding the City Council Hearing on Monday.

1. I have a map that I would like to share screen if possible, would that be something I could do while making public comment?

2. Myself and two of my colleagues will be making public comment on item number 8A. We are hoping we can be selected to speak in sequential order if at all possible, otherwise we'll go in the order that is called as preferred. The sequential order would be:
 1. Angelica Sanchez
 2. Chelsea Haskins
 3. Arturo Sanchez

Thank you so much for your time!

Kind regards,

Chelsea Haskins
Director of State and Local Licensing
C. 805-441-5014



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Glass Museum



N Franklin St

E Pine St

E Laurel St

Harold O.
Bainbridge
Park



Our Lady of
Counsel Ro

S Main St

Maple Street

September 27, 2021

City of Fort Bragg
Fort Bragg City Council
416 N. Franklin St.
Fort Bragg, CA 95437

Fort Bragg City Council,

I'd like to start by introducing ourselves, Perfect Union is a highly experienced operator that successfully operates eleven (11) dispensaries throughout the State of California. We currently employ more than 250 people and ensure that each employee is paid a living wage along with employment benefits such as medical insurance, dental insurance, paid vacation, and retirement through our longstanding partnership with the United Food and Commercial Workers Union ("UFCW"). For more than eleven (11) years, we have set the standard for excellence in the cannabis industry. We have the knowledge and experience to operate a world-class retail storefront that honors, respects, and contributes to the communities we serve.

We have for several months been negotiating and developing plans to open and operate a Dispensary in the General Commercial District Zone of the Inland Zoning Area. As an operator who respects quality of life, public safety, and the health of vibrant commercial districts we took great pains to identify and secure an appropriate property in which to place our Dispensary. After several months, we were able to identify a property that we believe meets and exceeds standards set for by the City at 112 S. Main Street, and have submitted an application for review and approval. 112 S. Main Street (formerly Redwood City Liquors) is located in the General Commercial District and fits all of the requirements stated in the City's ordinance. It is ideally situated away from residential homes, more than 1000 feet from youth-oriented services (1,559 feet away from the City Hall Gymnasium) and meets all of the City's sensitive use requirements.

We are excited and eager to proceed with our application and were deeply concerned to learn that the City Council is considering placing a moratorium on Applications and Permits for Cannabis Dispensaries in the Inland Zoning Area. We know how difficult it must be to balance the myriad of interests that exist in the City and we can appreciate why the City may need to consider a Moratorium, but **we hope the Council will consider a simple modification that would allow both our application and the moratorium to move forward.** To that end we request that the Moratorium be amended as follows:

1. Exempt, process, and license applications that have already been submitted in the Inland Zoning Areas from the moratorium;
2. Continue to accept and process applications that are located within the General Commercial Zone of the Inland Zoning Area.

We believe these proposed changes will limit saturation of cannabis retail businesses, address community concerns, and ensure a thriving local economy in the City of Fort Bragg. Please do not hesitate to reach out with any questions or concerns to Angelica Sanchez at Angelica@perfect-union.com.

Respectfully,

Angelica Sanchez
Director, Government Affairs & Compliance
Perfect Union



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 21-508

Agenda Date: 9/27/2021

Version: 1

Status: Business

In Control: City Council

File Type: Staff Report

Agenda Number: 8B.

Receive Report and Consider Establishing an Underground Utility District to Secure Rule 20 Work Credits and Avoid Becoming an Inactive District



AGENCY: City Council
MEETING DATE: September 27, 2021
DEPARTMENT: Public Works
PRESENTED BY: C. O'Neal
EMAIL ADDRESS: coneal@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Establishing an Underground Utility District to Secure Rule 20 Work Credits and Avoid Becoming an Inactive District

ISSUE:

The City has received notification from Pacific Gas and Electric Company's Rule 20 Program Liaison that we have become an Inactive Community under the Rule 20 Tariff regulations and that if we remain inactive, we are subject to reallocation of work credits to active communities. The City currently has approximately \$1.3 million in eligible credits that are only accessible if we become an active community by: Selecting a Qualifying Project Location; Holding a Public Hearing, and Adopting a Resolution to allocate the use of those work credits. Alternately, if we choose to remain inactive, we will be subject to partial work credit loss in approximately 90 days.

ANALYSIS:

Rule 20 is programmatic funding allocated to communities by PG&E whereby work credits are earned for the replacement of overhead utilities with underground electric facilities. Additional details about the program are explained in Attachment 1. The City was contacted in August 2021 by a representative from PG&E regarding the City's "inactive" status and to discuss updates to the Rule 20 Program implementation. Several important components to district programming that were covered include:

- On June 3, 2021, California Public Utilities Commission (CPUC) of the State of California passed Rulemaking 17-05-010 - *Phase 1 Decision Revising Electric Rule 20 and Enhancing Program Oversight*. This Decision described in the CPUC rulemaking is accessible here:
<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M387/K099/387099230.PDF>.
- Rulemaking 17-05-010 describes an overhaul to the CPUC's program including a potential loss of all work credits for communities that are not actively in a project phase which should be considered when determining if moving forward with a district identification is appropriate at this time.
- Rulemaking 17-05-010 establishes the intent of the CPUC not to allocate any work credits after December 31, 2022. It does not establish alternative work credit opportunities for communities and eliminates the option for cities to borrow against future credits, which could result in a project not being sufficiently funded.
- PG&E and the CPUC are currently preparing a Guide Book that outlines the process for underground electric distribution infrastructure. The Guide Book is expected to be available after October 1, 2021.

- A project could be programmed in correlation to a City capital project or PG&E can be the Lead on a project design and implementation facilitated by City Staff.

RECOMMENDED ACTION:

Provide direction to staff regarding the potential establishment of an underground district by recommending a preferred undergrounding district and scheduling a public hearing to consider approving a resolution authorizing establishment of a District to secure Rule 20 Work Credits for a future project.

ALTERNATIVE ACTION(S):

Direct staff to allow expiration of Rule 20 Work Credits.

FISCAL IMPACT:

The City currently has approximately \$1.3 million in Work Credits available. While the cost of a specific project is dependent on the size, location, and complexity of the selected project area, there are no identified additional funding mechanisms forthcoming from PG&E so any project remaining balance would need to be covered by City funds. Costs for staff time include public hearing and material preparation as well as project management for any project selected for implementation.

GREENHOUSE GAS EMISSIONS IMPACT:

There are no greenhouse gas emissions associated with the decision to establish an underground district. If a project was selected and developed, greenhouse gas emissions may be associated with the construction aspect of project implementation.

CONSISTENCY:

City Council passed Ordinance 382 in 1969 establishing Fort Bragg Municipal Code (FBMC) Chapter 12.08 Underground Utility Districts which would be used to establish proceeding should Council direct staff to bring forward a District location for consideration. Chapter 12.08 of the FBMC is located at:

<https://www.codepublishing.com/CA/FortBragg/#!/html/FortBragg12/FortBragg1208.html#12.08.030>.

The City's Coastal General Plan states, "visual resources can be readily degraded through poorly-designed and located structures, roads, signs, and utility lines that block coastal views, alter natural landforms, and detract from the small town character of the community."

Land Use Element 2, Policy LU-6.4, establishes a requirement for Underground districts.

Policy LU-6.4: Electrical and telecommunications transmission rights-of-way and pipelines shall be routed to minimize impacts to scenic resources and to Environmentally Sensitive Habitat Areas according to the following standards:

- a) Require underground installation of electrical and telecommunication lines where technically and economically feasible, unless it can be shown that other options are less environmentally damaging.
- b) Scarring, grading, or other vegetative removal shall be minimized and construction areas shall be revegetated with plants native to the area.
- c) Where above-ground electrical or telecommunications transmission lines are

necessary, the design and color of the support towers shall be compatible with the surroundings to the extent feasible. Avoid locating above-ground transmission lines along the crests of hills, bluffs, and in scenic resource areas.

The City's Inland General Plan, Housing Element 10, establishes that undergrounding utilities may be a requirement for new subdivisions.

IMPLEMENTATION/TIMEFRAMES:

If Council directs staff to pursue an underground district project, a Public Hearing will be held within 90 days and a project would need to be programmed and started prior to the December 31, 2022 work credit expiration date.

ATTACHMENTS:

1. Electric Rule No. 20 Information Sheet
2. Sample PG&E Provided Template Resolution
3. Potential Underground Utility Districts

NOTIFICATION:

1. Lizette Burtis, Rule 20A Program Liaison



ELECTRIC RULE NO. 20 Sheet 1
REPLACEMENT OF OVERHEAD WITH UNDERGROUND ELECTRIC FACILITIES

A. PG&E will, at its expense, replace its existing overhead electric facilities with underground electric facilities along public streets and roads, and on public lands and private property across which rights-of-ways satisfactory to PG&E have been obtained by PG&E, provided that:

1. The governing body of the city or county in which such electric facilities are and will be located has:

a. Determined, after consultation with PG&E and after holding public hearings on the subject, that such undergrounding is in the general public interest for one or more of the following reasons:

- 1) Such undergrounding will avoid or eliminate an unusually heavy concentration of overhead electric facilities;
- 2) The street or road or right-of-way is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic;
- 3) The street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of unusual scenic interest to the general public; and
- 4) The street or road or right-of-way is considered an arterial street or major collector as defined in the Governor's Office of Planning and Research General Plan Guidelines.

b. Adopted an ordinance creating an underground district in the area in which both the existing and new facilities are and will be located requiring, among other things, (1) that all existing overhead communication and electric distribution facilities in such district shall be removed, (2) that each property served from such electric overhead facilities shall have installed in accordance with PG&E's rules for underground service, all electrical facility changes on the premises necessary to receive service from the underground facilities of PG&E as soon as it is available, and (3) authorizing PG&E to discontinue its overhead service.

c. Acknowledged that wheelchair access is in the public interest and will be considered as a basis for defining the boundaries of projects that otherwise qualify for Rule 20A under the existing criteria set forth in Section A(1)(a) above.

(N)
|
|
(N)

(Continued)



ELECTRIC RULE NO. 20 Sheet 3
REPLACEMENT OF OVERHEAD WITH UNDERGROUND ELECTRIC FACILITIES

- A. (Cont'd.) (L)
3. The undergrounding extends for a minimum distance of one block or 600 feet, whichever is the lesser. (L)
- Upon request of the governing body, PG&E will pay from the existing allocation of that entity for: (L)
- The installation of no more than 100 feet of each customer's underground electric service lateral occasioned by the undergrounding. (L)
- The conversion of electric service panels to accept underground service, up to \$1,500 per service entrance, excluding permit fees. (L)
- The governing body may establish a smaller footage allowance, or may limit the amount of money to be expended on a single customer's electric service, or the total amount to be expended on all electric service installations in a particular project. (L)

(Continued)

<i>Advice Decision</i>	5085-E-A 11-05-018, 14-08-032 and 17-05-013	<i>Issued by</i> Robert S. Kenney <i>Vice President, Regulatory Affairs</i>	<i>Date Filed</i> <u>October 11, 2017</u> <i>Effective</i> <u>November 13, 2017</u> <i>Resolution</i>
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ELECTRIC RULE NO. 20

Sheet 4

REPLACEMENT OF OVERHEAD WITH UNDERGROUND ELECTRIC FACILITIES

- B. In circumstances other than those covered by A above, PG&E will replace its existing overhead electric facilities with underground electric facilities along public streets and roads or other locations mutually agreed upon when requested by an applicant or applicants when all of the following conditions are met: (L)
 - 1. a. All property owners served from the overhead facilities to be removed first agree in writing to have the wiring changes made on their premises so that service may be furnished from the underground distribution system in accordance with PG&E's rules and that PG&E may discontinue its overhead service upon completion of the underground facilities; or
 - b. Suitable legislation is in effect requiring such necessary wiring changes to be made and authorizing PG&E to discontinue its overhead service.
 - 2. The applicant has:
 - a. Furnished and installed the pads and vaults for transformers and associated equipment, conduits, ducts, boxes, pole bases and performed other work related to structures and substructures including breaking of pavement, trenching, backfilling, and repaving required in connection with the installation of the underground system, all in accordance with PG&E's specifications, or, in lieu thereof, paid PG&E to do so;
 - b. Transferred ownership of such facilities, in good condition, to PG&E; and
 - c. Paid a nonrefundable sum equal to the excess, if any, of the estimated costs, of completing the underground system and building a new equivalent overhead system.
 - 3. The area to be undergrounded includes both sides of a street for at least one block or 600 feet, whichever is the lesser, and all existing overhead communication and electric distribution facilities within the area will be removed. (L)

(Continued)

Advice 5085-E-A
Decision 11-05-018, 14-08-032 and 17-05-013

Issued by
Robert S. Kenney
Vice President, Regulatory Affairs

Date Filed October 11, 2017
Effective November 13, 2017
Resolution



ELECTRIC RULE NO. 20 Sheet 5
REPLACEMENT OF OVERHEAD WITH UNDERGROUND ELECTRIC FACILITIES

- B. (Cont'd) (L)

 - 4. PG&E may, when requested by the city or county and mutually agreed upon by such government entity and PG&E, initially fund any required engineering/design costs for conversion projects under this section. In the event such a project proceeds, the requesting city or county shall reimburse PG&E for such engineering/design costs before PG&E shall be required to commence further work on the project. In the event the project is not approved to proceed within two and one-half years of PG&E's delivery of such engineering/design study, the requesting city or county shall reimburse PG&E for its costs of such engineering/design study within 90 days of a demand by PG&E. In the event payment is not received PG&E shall expense such costs as an operational cost and shall reduce the city or county's allocations provided under Section A of this Schedule by the amount.
 - 5. The costs of removal of the overhead poles, lines, and facilities are the responsibility of PG&E and will be paid by PG&E. Such payments shall not operate to reduce Rule 20-A allocations.

- C. In circumstances other than those covered by A or B above, when mutually agreed upon by PG&E and an applicant, overhead electric facilities may be replaced with underground electric facilities, provided the applicant requesting the change pays, in advance, a nonrefundable sum equal to the estimated cost of the underground facilities less the estimated net salvage value and depreciation of the replaced overhead facilities. Underground services will be installed and maintained as provided in PG&E's rules applicable thereto.
- D. The term "underground electric system" means an electric system with all wires installed underground, except those wires in surface mounted equipment enclosures. (L)

Resolution No. _____

WHEREAS, the California Public Utilities Commission (CPUC) has authorized electric and telecommunication utilities to convert overhead utility lines and facilities to underground pursuant to Electric Rule 20 and Telecommunication Rule 32, and

WHEREAS, pursuant to certain criteria, CPUC rules allow participating cities and counties to establish legislation authorizing the creation of underground utility districts within which existing overhead electric distribution and telecommunication distribution and service facilities will be converted to underground, and

WHEREAS, the City of NAME, has adopted an ordinance authorizing the City Council to designate areas within which all existing overhead poles, overhead wires and overhead equipment associated with the distribution of electric power, telecommunication services and cable television should be removed and replaced with underground wires and facilities; and

WHEREAS, the Director of Public Works for the City of NAME has consulted with the affected public utilities and such utilities have agreed that the proposed underground conversion district, designated the NAME Underground Utility District and more particularly described in Exhibit 1 attached hereto and incorporated herein by reference, meets the criteria established by the rules of the CPUC, to wit,

[that such undergrounding will avoid or eliminate an unusually heavy concentration of overhead electric facilities, AND/OR]

[that the street or road or right-of-way is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic, AND/OR]

[that the street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of unusual scenic interest to the general public, AND/OR]

[that the street or road or right-of-way is considered an arterial street or major collector as defined in the Governor's Office of Planning and Research General Plan Guidelines,] and

WHEREAS, each year the City of NAME is notified by PG&E regarding the allocation of work credits for conversion of overhead electric distribution lines and facilities to underground, known as Rule 20A allocations, and

WHEREAS, the Director of Public Works for City of NAME has consulted with PG&E and determined that the City has accumulated Rule 20A work credits or PG&E has agreed that the City may borrow against future credits sufficient to complete the proposed overhead to underground conversion project, and

WHEREAS, the City of NAME and the affected utilities have agreed by letter that each utility shall complete the engineering of their respective portion of the NAME Overhead to Underground Utility Conversion Project, and

WHEREAS, the City of NAME and the affected utilities have agreed by letter that PARTY shall be responsible for preparation of the trench profile and composite drawings and that PARTY shall be designated as “trench lead” to manage trenching, installation of substructures, and pavement restoration and such other work, and

WHEREAS the Director of Public Works of the City of NAME and the affected utilities have agreed on a work schedule which meets their respective capabilities and further agreed to waive any administrative fees, costs or special street restoration requirements for purposes of this project, and

WHEREAS, to the extent required, the City of NAME has agreed to provide easements or rights of way on private property as may be necessary for installation of utility facilities in a form satisfactory to the affected utilities, and

WHEREAS, the City Council of the City of NAME has now received the report from the Director of Public Works recommending that the area identified in Exhibit 1 should be designated as an underground utility district within which all existing overhead poles, overhead wires and overhead equipment associated with the distribution of electric power, telecommunication services and cable television should be removed and replaced with underground wires and facilities; and

WHEREAS, upon the recommendation of the Director of Public Works, the City Council of the City of NAME has determined that the proposed NAME Underground Utility District is categorically exempt from environmental review pursuant to the California Environmental Quality Act, and

WHEREAS, the City of NAME has notified all affected property owners within the proposed NAME Underground Utility District and inviting same to attend a public hearing to discuss formation of the proposed district, and

WHEREAS, the City Council of the City of NAME held public hearings at which time the Council did receive and consider the recommendation of the City Engineer and did hear any and all objections or protests that were raised by the owners of property within the above described district pertaining to designating this area an underground utility district;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the CITYof NAME that:

Section 1. The public interest requires the removal of all existing utility poles [excepting those poles supporting streetlights, traffic signals or trolley lines], overhead wires and associated overhead structures and installation of underground wires and facilities for supplying electric power, communication, or similar associated services within the areas as shown in Exhibit 1, attached hereto, with such area being designated as the NAME Underground Utility District, and

Section 2, That the utility companies, cable television services and other affected services shall commence work on installation of underground facility installation in NAME Underground Utility District and that as each phase of the project is complete and ready for conversion from overhead to underground utility facilities, all fronting property owners shall be notified by first class letter, postage pre-paid, of the schedule for conversion of all utility service lines, and

Section 3, The electric utility shall [USE/NOT USE] the underground conversion allowance computed pursuant to decisions of the California Public Utilities Commission for the purpose of providing to each premises requiring it in NAME Underground Utility District a maximum of one hundred feet of individual electric service trenching and conductor (as well as backfill, paving and conduit, if required) and each other serving utility shall provide service trenching and conductor in accordance with its rules and tariffs on file with the California Public Utilities Commission or as required by its Franchise Agreement with the City of NAME, and

Section 4. The electric utility shall [USE/NOT USE] said underground conversion allowance allocation, up to a maximum amount of \$1500 per service entrance excluding permit fees, for the conversion of electric service panels to accept underground service in the NAME Underground Utility District, and [EACH PROPERTY OWNER/THE CITY OF NAME] shall be financially responsible for any and all costs not covered by the electric utility for the installation and maintenance of the conduit and termination box located on, under or within any structure on the premises served, and

Section 5. That upon notification as specified in Section 2, all property owners in NAME Underground Utility District shall have underground electrical entrance facilities installed and inspected pursuant to the City of NAME Electrical Code within sixty (60) days and that should any property owner fail to install satisfactory underground electrical entrance facilities by the date specified in the notice, the electric utility shall notify the Director of Public Works who shall, within thirty (30) days direct the electric utility in writing to discontinue electrical service to the property, without recourse, pursuant to Rule 11 until electrical entrance facilities are ready to accept underground electrical conductors and have passed the necessary inspection requirements, and

Section 6. That once all services have been converted from overhead to underground, the utility companies, cable television services and other affected services shall remove all poles (except as specified above) and associated overhead facilities in NAME Underground Utility District, by _(DATE)

The foregoing resolution was adopted by the City Council of the City of NAME on the DATE by the following votes:

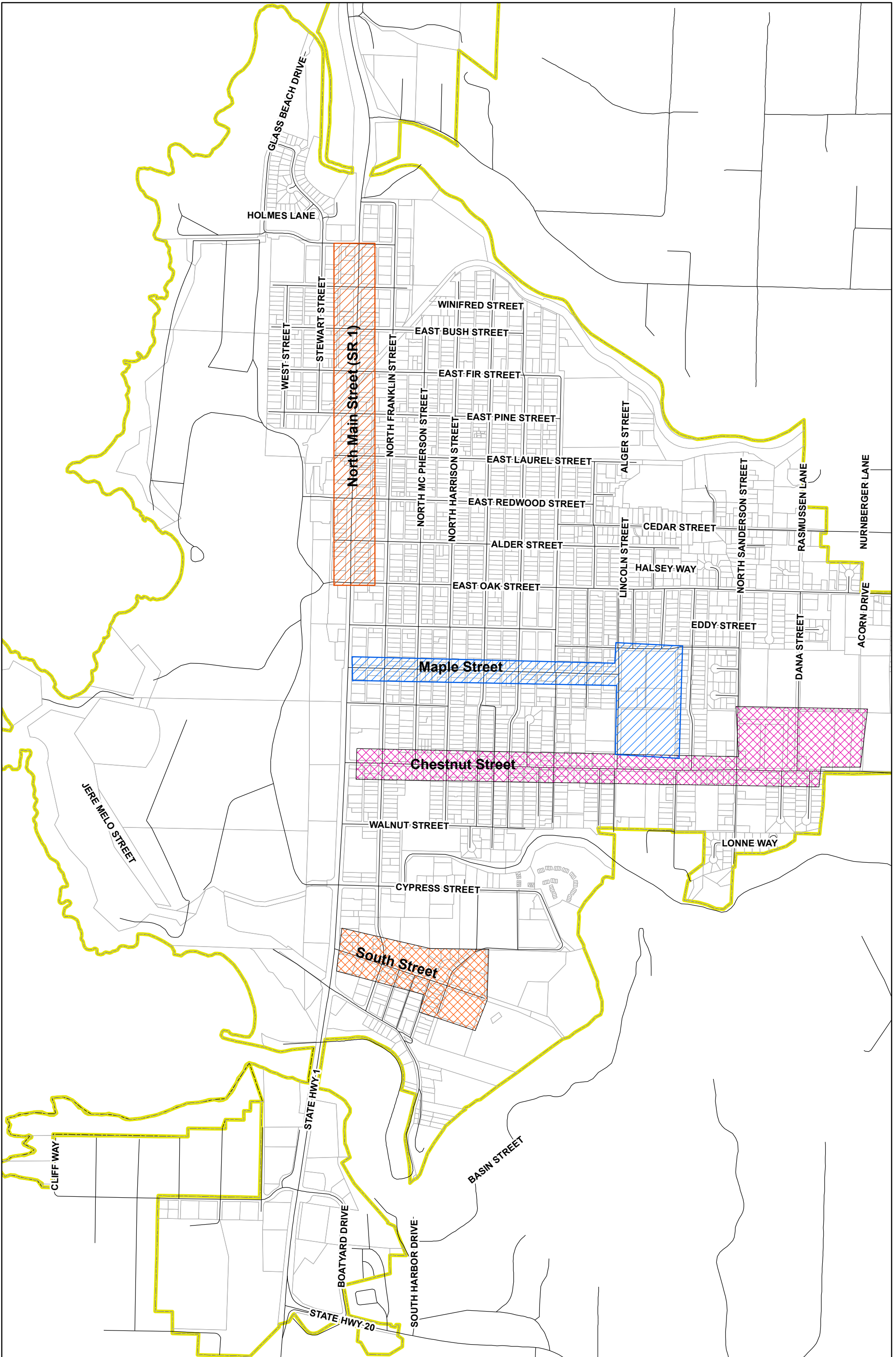
AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:



Feature and boundary locations depicted are approximate only.

08-27-2021


 Feet
 0 200

Potential Underground Districts

From: [Bill Mann](#)
To: [Lemos, June](#)
Subject: September 27 Agenda Item 8B. 21-508, Underground Utility District
Date: Monday, September 27, 2021 2:24:17 PM

Ms. Lemos, Staff:

Please enter the following into the Public Record for tonight's Council Meeting:

Mayor, Manager, Council, and Chantell O'Neal:

Apologies for this tardy request for inclusion into Ms. O'Neal's Timely Rule 20 Report, proposing an Underground Utility District to acquire credits and Avoid Becoming An Inactive District.

This request asks that the Alleyway just East of North Franklin St., running South/North between Oak St. and Laurel St., Fort Bragg, be included within the final district submission proposal. Committee seems to be leaning towards Chesnut St. as the most appropriate Underground Utility District. However certain information was not available to Ms. O'Neal or Committee at time of consideration. Specifically, within the last 60-90 days the Fort Bragg Fire Department was notified twice by the 911 Dispatcher of electrical 'arcing' and small 'fire balls' dropping on a neighbor's carport in the 100 Block. At the same time the fire department was responding to a call on the Redwood or Laurel end of the same alleyway. The transformers that frequent the same alleyway are unquestionably in need of updating (recently acknowledged by a PG&E lineman and at least one local electrical contractor). Burying them is certainly warranted.

In light of the above sightings; the immediate apparent danger to both commercial and residential properties in the CBD; and the draught/fire season upon us - it seems prudent to mandate that this section of Fort Bragg's interior - be included in the current districting proposal. Given that Chestnut St. and the Franklin St. Alleyway intersect each other, it also appears the two segments could be joined to form an L-SHAPED Underground Utility District.

Please consider amending the current proposal to include this imminent electrical fire hazard route within Director O'Neal's existing plan to rescue Fort Bragg's Rule 20 Work Credits.

Sincere regards,
Bill Mann
120 N. Franklin St.



Virus-free. [https://link.edgepilot.com/s/2cc0ad44/4gfz6Qty6U_L7fFVmhrv3g?
u=http://www.avast.com/](https://link.edgepilot.com/s/2cc0ad44/4gfz6Qty6U_L7fFVmhrv3g?u=http://www.avast.com/)



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Text File

File Number: 21-504

Agenda Date: 9/27/2021

Version: 1

Status: Business

In Control: City Council

File Type: Resolution

Agenda Number: 8C.

Receive Report and Consider Adoption of City Council Resolution Approving a One-time Contribution to Mendocino Solid Waste Management Authority (MSWMA)



AGENCY: City Council
MEETING DATE: September 27, 2021
DEPARTMENT: City Manager
PRESENTED BY: Tabatha Miller
EMAIL ADDRESS: tmiller@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of City Council Resolution Approving a One-time Contribution to Mendocino Solid Waste Management Authority (MSWMA)

ISSUE:

The primary funding for Mendocino Solid Waste Management Authority (MSWMA) comes from a \$6.50 per ton surcharge on all solid waste in the County as collected at the transfer stations. The surcharge is passed on to solid waste customers, as part of the solid waste collection fees by haulers such as Waste Management. The MSWMA tipping fee surcharge plus grant revenues provide the revenues to cover the costs of services provided by MSWMA. Revenues have been short of expenditures for many years. In late 2019, the MSWMA jurisdictions approved an increase in the tipping fee of \$1.50, effective 1-20-2020, from \$5.00 to \$6.50 to close the operating deficit.

The pandemic's arrival in March 2020 further stretched the resources of MSWMA. Like many jurisdictions, the quantity of household hazardous waste (HHW) increased dramatically as folks stuck at home focused on cleaning and renovation the spaces where they were spending most, if not all of their time. Disposal costs increased from \$109k in FY 18-19 to \$154k in FY 19-20 to \$220k in FY 20-21. After making cuts to the FY 21-22 budget and using reserves to fill gaps, the Board agreed in April that it needed to ask the four member jurisdictions for one-time contributions.

The funding requested from each jurisdiction is as follows, based on proportion of 2020 population:

City of Ukiah (pop. 16,061)	\$29,440
City of Ft. Bragg (pop. 7,427)	\$13,600
City of Willits (pop. 5,072)	\$9,280
County of Mendocino (pop. 58,915)	<u>\$107,680</u>
Total	<u>\$160,000</u>

ANALYSIS:

MSWMA was originally created through a Joint Powers Agreement between the Cities of Fort Bragg, Ukiah, Willits and Mendocino County to provide administrative oversight and program implementation for solid waste and recycling in the County. Each city member is represented by one elected Councilmember and the County is represented by one coastal district Supervisor and one inland district Supervisor.

MSWMA ensures that local solid waste haulers, including trash, recycling and composting, are providing services according to State and Federal law, including preparation and implementation of a Reduction and Recycling Plan. MSWMA is also tasked with making

efforts, including education, to increase recycling and diversion of materials from landfills. MSWMA through MendoRecycle operates the household hazardous waste facility in Ukiah and the HazMobile throughout the County. The HazMobile typically visits Fort Bragg on a monthly basis and a [schedule](#) of times and locations is available on [MendoRecycle's website](#).

Although limited since the pandemic started, MSWMA also provides assistance with local cleanup of illegal dumping and removal of graffiti on public and private property. Historically, MSWMA has provided assistance with the City's encampment clean ups. Additionally, MSWMA operates the Tire Amnesty programs which allows periodic free collection of tires. The Tire Amnesty programs are supported by grant revenues.

After receiving the one-time funding requests in April 2021, staff from the City of Ukiah, City of Fort Bragg and Mendocino County voiced concern that the one-time supplemental funding from its respective general funds may not adequately fix the financial challenges of MSWMA and could lead to continued general fund subsidies. Staff, working with the then-General Manager Jennifer Lomardi, agreed to form a Technical Advisory Committee (TAC) to review the financials and provide recommendations for dealing with what was perceived to be a structural deficit and not necessarily a one-time operating deficit.

Initially, the TAC determined that an increase of \$3.00 a ton to the surcharge was necessary to stabilize the operating budget and build up a sufficient reserve. The TAC was concerned that a 46% increase in the tipping fee from \$6.50 to \$9.50 was significant and may not be supported by the member entities (who are all required to approve it), the haulers and even the public. This raised the question whether the TAC should consider a more efficient operating model. In 2019, the MSWMA Board evaluated whether privatizing the operations would resolve the financial shortfalls which had accumulated over a number of years. At that time, MSWMA Board determined that public ownership was a priority and recommended the \$1.50 increase in tipping fee to stabilize operations.

In response to the current financial shortfall, the TAC recommend the Board consider four options (see Attachment 4).

- **Option 1** – Continue the status quo operating structure which would require the \$3.00 surcharge to financially support continued operations.
- **Option 2** – Continue with Option 1 but increase the salary for the MSWMA General Manager, who could pursue and manage grants to increase revenues to support operations.
- **Option 3** – Contract out MSWMA General Manager duties, the HHW and illegal dump cleanups.
- **Option 4** – Hire a Solid Waste Analyst embedded into another agency who would manage outsourced MSWMA services.

Several versions of each option were also considered. The assumption was that Option 3 & 4 could be accommodated within the current \$6.50 surcharge and would be modeled after the Lake County HHW program. However, there is a question whether or not this would

provide the pre-pandemic level of service provided by MSWMA. There was friction between the MSWMA General Manager, the TAC staff members and some of the MSWMA Board on preferred options and the TAC did not make a specific recommendation but did acknowledge that operating funds, either as a one-time payment or loan, were needed in the short-term to continue current MSWMA operations.

RECOMMENDED ACTION:

The MSWMA Board recommends that the City Council adopt the Resolution approving the one-time payment of \$13,600. Staff recommends that the City Council approve the one-time payment so that operations may continue but consider conditioning the payment as a loan to be repaid. The condition may be extended to all MSWMA entities and the MSWMA Board could build repayment to all member entities into its operational recommendations. Or in the alternative, the City Council could approve the payment contingent on all the member entities contributing their allocated share, to ensure that every member agrees to subsidize MSWMA.

ALTERNATIVE ACTION(S):

Do not adopt the Resolution and/or provide proposed language changes to present to the MSWMA Board.

FISCAL IMPACT:

The one-time payment request is not budgeted and will require a general fund budget amendment. If the City Council does not want to require the funds be treated as a loan, an alternative would be to use funds budgeted in the City Council's goal account 110-4110-0319 that have not been allocated for a specific purpose.

GREENHOUSE GAS EMISSIONS IMPACT:

There is no direct impact to greenhouse gas emissions from payment of one-time money to support ongoing existing MSWMA operations.

CONSISTENCY:

N/A

IMPLEMENTATION/TIMEFRAMES:

If approved the payment will be processed within approximately 4 weeks.

ATTACHMENTS:

1. Resolution
2. Letter from MSWMA Board
3. MSWMA Profit & Loss 2015-2021
4. TAC Proposed Options

NOTIFICATION:

1. Mendocino Solid Waste Management Authority **Notify Me subscriber list.**

RESOLUTION NO. ____-2021

**RESOLUTION OF THE FORT BRAGG CITY COUNCIL
APPROVING A ONE-TIME PAYMENT OF \$13,600 TO MENDOCINO SOLID
WASTE MANANGEMENT AUTHORITY**

WHEREAS, the Mendocino Solid Waste Management Authority (MSWMA) was created by a Joint Powers Agreement (JPA) among the Cities of Fort Bragg, Ukiah, Willits and the County of Mendocino in October of 1990 and was revised in 2019 to reflect current services and operations of MSWMA; and

WHEREAS, each of the members to the JPA is a "public agency" as defined in Government Code Section 6500; and

WHEREAS, pursuant to Title 1, Division 7, Chapter 5, of the Government Code, commonly known as the Joint Exercise of Powers Act, two or more public agencies may, by Agreement, jointly exercise any power common to the contracting member; and

WHEREAS, each of the members has the power, in addition to other powers which are common to each of them, to adopt, develop and implement programs and activities to increase recycling and other measures to divert solid waste from being disposed in landfills, to provide for the proper handling, reuse and disposal of household hazardous waste, to provide for the clean-up of sites where solid waste has been illegally deposited and to prevent and remove graffiti from public or private property; and

WHEREAS, the California Integrated Waste Management Act (the "Act"), as codified in Division 30 of the Cal. Public Resources Code ("PRC"), as periodically amended, requires each of the members to prepare a source reduction and recycling element and a household hazardous waste element in compliance with Division 30, Part 2, Chapters 2, 3 and 3.5 of the PRC; and

WHEREAS, it is mutually advantageous for the members to work together and share costs to: (1) adopt, develop and implement programs and activities to increase recycling and other measures to divert solid waste from being disposed in landfills, to provide for the proper handling, reuse and disposal of household hazardous waste, to provide for the clean-up of sites where solid waste has been illegally deposited and to prevent and remove graffiti from public or private property; and (2) prepare and implement a source reduction and recycling element and a household hazardous waste element that meets the requirements of the Act; and

WHEREAS, effective January 1, 2020, a \$1.50 increase in the per ton surcharge on solid waste in the County, which is collected at the transfer station, was implemented after approval by the MSWMA members. This increased the prior \$5.00 per ton charge to \$6.50 per ton; and

WHEREAS, in order to continue the work of MSWMA, the MSWMA Board Members have requested one-time payments from each member entity based on 2020 population. The

MSWMA Commissioners recommend a \$13,600 one-time payment from the City of Fort Bragg as its proportional share of operating shortfalls; and

WHEREAS, based on all the evidence presented, the City Council finds as follows:

1. To support the ongoing operations and valuable services provided by MSWMA it is necessary that each member entity agree to pay a proportional one-time payment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fort Bragg does hereby approve the \$13,600 one-time payment to MSWMA.

The above and foregoing Resolution was introduced by Councilmember _____, seconded by Councilmember _____ and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 27th day of September, 2021, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**
- RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

June Lemos, CMC
City Clerk



Mendocino Solid Waste Management Authority
A joint powers public agency

Letter to Four Jurisdictions – Sept. 17, 2021

County of Mendocino
City of Ukiah
City of Ft. Bragg
City of Willits

Dear Board and City Councils,

Background:

Mendocino Solid Waste Management Authority (MSWMA) is formed by a Joint Powers Agreement of County of Mendocino and Cities of Ukiah, Ft. Bragg and Willits. The agency provides an essential service of collecting, recycling where possible, and disposing of hazardous wastes, including chemicals, paints, tires, batteries, propane tanks, pharmaceuticals, liquid fuels, fluorescent tubes, aerosols, freon, and other materials. To the extent feasible it also does county-wide illegal dump clean-ups. These services are NOT included in the garbage service provided by private haulers under contract with their respective jurisdictions and which are paid for by their customers.

This agency does not have a customer base and does not charge for most of its services (since to do so might result in hazardous waste being thrown on our roadsides and into our creeks). Instead, we have relied almost exclusively on a surcharge on tipping fees, currently at \$6.50/ton (which in turn is passed on under their respective contracts to the customers of the private garbage hauling companies), and on various grants, primarily for handling HHW (household hazardous waste), tires, paint, and oil.

The reliance on the tipping fee surcharge and grant funding was almost sufficient to cover the services - until the pandemic hit in March of 2020. In a pattern experienced in many other jurisdictions, the quantity of HHW increased dramatically. For MSWMA, the HHW disposal costs went from an average of \$103,000 annually in the preceding four years to over \$150,000 in FY 2019-20 (only 3-1/2 months into the pandemic) and then to \$220,000 in FY 2020-21. The cumulative strain on the budget has been an increased outlay of almost \$150,000. (See attached five year financial summary.)

For a year, hoping that the unusual circumstances were temporary, we tried to cope with our budget by scrimping (delaying some repairs, stockpiling some expensive disposals, cutting the training budget, etc.) and drawing down on our reserves. In April 2020, our Board recommended seeking one-time contributions from our four member jurisdictions to replenish reserves and enable us to seek more grant funding. In subsequent months, a Technical Advisory Committee of city managers and/or staff explored an alternative of an increase in the tipping fee surcharge; they also suggested (but did not recommend) possible alternative management structures.

At the meeting of the MSMWA Board on Sept. 16, we finally decided to go back to the request for a one-time contribution from our member jurisdictions. If approved, this will enable the agency to continue providing its essential public services at a reasonable level, to begin disposing of stockpiled HHW, and to pursue more grant funding. To address the longer-term, the Board will have time to explore whether there are more efficient management options, funding mechanisms, or other solutions.

Request for One-Time Contributions:

The funding requested from each jurisdiction is as follows, based on proportion of 2020 population:

City of Ukiah (pop. 16,061)	\$ 29,440
City of Ft. Bragg (pop. 7,427)	\$ 13,600
City of Willits (pop. 5,072)	\$ 9,280
County of Mendocino (pop. 58,915)	<u>\$107,680</u>
Total	\$160,000

The viability of this proposal relies on all four jurisdictions agreeing to contribute their share.

We request that you place this on an upcoming agenda for your governing body as soon as possible. One or more representative of MSWMA will be happy to attend to present this request and answer questions. Please RSVP to me as to when this item is scheduled, at (707) 459-1493 or mstrong@willitsonline.com.

Sincerely,

Madge Strong, Chair on behalf of the MSWMA Board (Dan Gjerde, Mo Mulheren, Jim Brown, and Jessica Morsell-Haye, and myself)

MendoRecycle - Profit & Loss: July 2015-June 2021

	FY2015-16	FY2016-17	FY2017-18	FY2018-19	FY2019-20	FY2020-21
INCOME						
JPA/County Payments	99,572	99,545	98,883	100,920	16,595	0
CalRecycle Payments	149,503	333,530	118,386	103,943	117,051	118,400
Contract/Program Payments	60,383	84,712	42,637	36,133	34,807	26,693
Disposal Site Surcharge	297,581	369,924	310,043	264,794	408,236	510,777
HHW Service	52,217	69,631	108,975	46,135	59,238	46,968
Misc. (Health paymts, interest)						
Total Income	707,834	960,824	714,443	667,012	643,689	711,019
EXPENSES						
Administrative (Health Ins., Prof. Serv., Workers Comp, Audit, Misc.)	85,670	104,951	101,795	116,694	113,139	109,514
Facility & Util.	10,810	42,707	31,384	39,975	43,397	30,364
Automotive	42,400	34,057	18,097	31,385	28,823	24,044
Travel	2,375	1,767	2,140	2,112	1,796	810
Personnel (420)	59,974	136,089	339,567	310,972	272,935	302,070
Payroll (570)	237,257	178,469				
Equipment	0	675	18,378	19,570	10,536	5,615
Supplies	50,950	45,688	49,169	38,577	35,134	31,958
Training	1,887	1,760	707	2,016	1,845	1,251
Education, Outreach, Ads	14,118	3,356	11,677	21,497	13,718	5,904
HHW Disposal, Service Charges	80,145	100,360	124,147	108,881	154,375	220,416
Grant Expenses (deleted)	72,366	62,539	17,547	250	0	0
Depreciation, Misc .	964	38,232	35,032			
Total Expenses	771,916	839,430	749,641	691,929	675,698	731,946
Net Income/Exp.	(64,082)	121,394	(35,199)	(24,917)	(32,009)	(20,928)

	FY2021-22	FY2022-23	FY2023-24	FY2024-25	FY2025-26	FY2026-27
INCOME						
JPA/County Payments	0	0	0	0	0	0
CalRecycle Payments	145,426	61,100	61,100	61,100	61,100	61,100
(Less HHW & tire; only city/co & oil)						
Contract/Program Payments	20,450	20,450	20,450	20,450	20,450	20,450
Disposal Site Surcharge	508,677	508,677	508,677	508,677	508,677	508,677
HHW Service	45,007	45,007	45,007	45,007	45,007	45,007
Misc. (Health paymtns, interest)						
Total Income	725,360	641,234	641,234	641,234	641,234	641,234
EXPENSES						
Administrative	137,380	152,120	127,620	128,120	128,620	129,120
(Health Ins., Prof. Serv., Workers Comp, Audit, Misc.)						
Facility & Util.	36,563	36,563	36,563	36,563	36,563	36,563
Automotive	30,000	30,000	30,000	30,000	30,000	30,000
Travel	2,200	2,200	2,200	2,200	2,200	2,200
Personnel (420)	310,667	350,508	360,941	371,699	387,821	405,842
Payroll (570)	0	0				
Equipment	6,680	6,680	6,680	6,680	6,680	6,680
Supplies	28,877	28,877	28,877	28,877	28,877	28,877
Training	2,200	2,200	2,200	2,200	2,200	2,200
Education, Outreach, Ads	3,100	3,100	3,100	3,100	3,100	3,100
HHW Disposal, Service Charges	161,523	194,030	148,030	148,030	148,030	148,030
Grant Expenses (deleted)	0	0	0	0	0	0
Depreciation, Misc .	0	0	0			
Total Expenses	719,190	806,278	746,211	757,469	774,091	792,612
Net Income/Exp.	6,170	(165,044)	(104,977)	(116,235)	(132,857)	(151,378)

Added Income, Tipping Fee Increase:

Fee @ \$1.50/ton

Fee @ \$2.00/ton

Fee @ \$2.50/ton

Fee @ \$3.00/ton

The TAC has discussed several options to resolve the current staffing & financial issues. Below are four options for the Board’s discussion that cover the entire spectrum of status quo operating structure to a complete MendoRecycle restructure. The TAC does not have a consensus on a preferred option but is available to discuss the pros and cons of each option.

Option 1 – Status quo operating structure. The TAC determined in order to fill the current financial hole and provide funding for ongoing operations, grant applications and county-wide solid waste efforts a surcharge increase of \$3.00 per ton would be necessary. This would result in approximately \$200,000 in additional revenue, which would provide sufficient revenue for the aforementioned activities.

Option 2 – Status quo operating structure with increase in salary for MendoRecycle General Manager and recruit to fill the position. It is the hope a higher salary would assist in recruiting a well-qualified candidate with the ability to pursue and manage grants. This option may require an increase in the surcharge, at least initially, until grants can be obtained for ongoing funding. This option could be done with HHW and illegal dump cleanup by MendoRecycle staff or contract out those services.

Option 3 – Contract out General Manager position and HHW and Illegal Dump Cleanup services. This option is simpler and most likely has a shorter timeline than adding a Solid Waste Analyst onto City or County staff. It is unknown whether the current \$6.50 surcharge per ton would provide sufficient funding for this option as that will depend on the cost proposals of any potential contractors.

Option 4 – Hire Solid Waste Analyst onto Member Agency staff (funded by surcharge) and contract out HHW and Illegal Dump Cleanup services. It is anticipated the current \$6.50 surcharge per ton would provide sufficient funding for this option, including reimbursing the City/County for staffing costs and developing a reserve for special projects, expansion of services, or financial downturns. This option would require an amendment to the JPA to develop clear roles and responsibilities of the parties. Attention would also need to be given to considerations such as legal counsel, Auditor/Treasurer and other services that may be provided by Member Agency or contracted out. See below for details on this option:

CODES:

Private	Private contractor providing operational services, possessing: 1.) the ability to assume, by law or by rule, hazardous waste handling permit for Plant Road Facility and 2.) a current hazardous waste transportation permit.
MS/?	Staff of one of the Member agencies’ staff: FB, MC, U, W
IC	Independent Contractor/Consultant (various as needed)
SWA	Solid Waste Analyst to become an employee of a Member Agency (New Hire)
Haulers	City/County Franchise Hauling Companies
TBD	To be decided

Suggested Task Assignment subject to discussion and final approval:

<u>Code:</u>	<u>Task</u>
SWA	1. Routine grant applications (Haz waste, oil, mattresses, batteries, etc.)
SWA/IC	2. Non-Routine grant applications. (Other, non-reoccurring)
SWA	3. MSWMA Budget

SWA	4. MSWMA Board meetings Agenda/Minutes
SWA	5. Collection/Accounting for per ton fees.
SWA	6. Collection/Accounting for grant revenue
SWA	7. Debt service, if any, payment on Plant Road yard mortgage note.
MS/U	8. Development of Plant Road Lease and operating contract with private company.
SWA	9. Contract administration of private operating company.
SWA	10. Payment of contract invoices
SWA, MS/?	11. Collection/Payments Caspar fund. (Admin Cost to be billed to CFB/County?)
Private	12. Material acceptance: Ukiah Plant Road yard, mobile evets
SWA/Private	13. Develop Events schedule outside Ukiah for Board Approval
Private	14. Provide trucks and equipment for pickup and processing of accepted material Countywide
Private	15. Operation and maintenance of Plant Road yard.
SWA, MS/?	16. Scheduling for requested illegal dumping cleanup /payment of invoices per contract schedule or other arrangements.
Private/IC	17. Provide illegal dumping cleanup crew, trucks, bins, boxes and equipment
SWA	18. Website management.
SWA/Haulers	19. Educational outreach
SWA	20. Required reporting
SWA	21. Update MSWMA Source Reduction and Recycling Element (Plan)
SWA	22. Update MSWMA Household Hazardous Waste Element (Plan)
SWA	23. Chair/call meetings of Haulers Advisory Committee (Semi-annual or as needed)
SWA	24. Chair/ call meetings of MSWMA Advisory Committee (County and City Local Government Staff) (Semi-annual or as needed)
TBD	25. Consider Formation of MSWMA 3-member Executive Committee: supervisor/ council member/ MCDT Staff person; (similar to LAFCO) to give guidance between infrequent MSWMA Board meetings
Private	26. Operate paint recycling program

*** Estimated Per Ton Allocation:**

If operational and administration tasks were to be restructured as suggested in Option 4, then it is estimated that the current \$6.50 per ton surcharge would be allocated as follows.

Private Company Contract Services:	\$2.00/ton	(plus, direct routine grant amounts) (1)
Illegal dumping cleanup costs:	\$2.00/ton	(allocated to Member Jurisdictions, TBD)
Administration:	\$1.75/ton	(Includes new hire Solid Waste Analyst position)
Deficit back fill and reserve building	<u>\$0.75/ton</u>	(Cure any FY2021 deficit, and build reserve)
Current per ton rate:	\$6.50/ton	

* It should be pointed out that a large share of the cost to dispose of hazardous waste are for those amounts paid to third-party vendors who accept this waste for final disposition. These third-party vendor direct costs are a function of the volume of the hazardous waste collected in Mendocino County at the Gate of the Plant Road facility and at Mobile Collection Events. Such direct costs related to disposal are subject to change in the volume of the waste from year to year.

Comment – Delay in Collection of Surcharge Increase/ Uncovered Costs:

It should be noted that any Board authorized increase in the MendoRecycle surcharge collected as part of various transfer station gate fees in the county, generally become effective on January 1 of the following year, as part of the once-a-year adjustment described in those transfer station contracts. And, any increase in the MendoRecycle surcharge must also be included as a pass-through adjustment in setting the various January 1 franchise curbside collection rates of the Member jurisdictions. This adjustment allows the curbside haulers to recover the increased MendoRecycle surcharge cost to them

For that reason, should the Board authorize any surcharge increase during Fiscal Year 2022 (12-months ending June 30, 2022), then no increased surcharge revenue would be collected until January 2022, half way through the current MendoRecycle fiscal year. The Board may want to consider a larger increase up-front to help to cover the immediate financial needs.