



AGENCY:	City Council
MEETING DATE:	June 26, 2023
DEPARTMENT:	City Manager
PRESENTED BY:	MJC

AGENDA ITEM SUMMARY

TITLE:

Receive Report and Provide Policy Direction to Staff Regarding Future Zoning Modification to Allow Outdoor Dining

ISSUE:

The Mendocino County Health Officer, Dr. Noemi Doohan declared a local health emergency on March 4, 2020, and the Fort Bragg community embarked on a strategy to reduce COVID transmission and hospitalizations over the following three-year period. During this time, many Fort Bragg businesses made significant operational adaptations to reduce risk to people from the COVID pandemic. One of those adaptations, open-air and tent-based dining has proven to be a benefit to businesses and the community. Specifically during the COVID pandemic, the City allowed a number of restaurants to move tables outdoors and set up outdoor tents. The City also waived parking requirements and capacity fee charges. Outdoor dining allowed all diners to reduce their exposure risk to COVID, and many found it a pleasant experience. While the fight against COVID has largely been won through vaccines and public health measures, a small but important component of our community are elderly or have underlying conditions that continue to make them vulnerable to COVID infections and complications.

In May 2020, the City adopted an amendment to the Municipal Code which gave the City Manager, as the Director of Emergency Services, the power ***“To waive zoning requirements and/or standards to facilitate business operations of established businesses affected by public health orders of the federal, State, or county government, to the extent that such waivers would not result in an increase in general intensity of use beyond what is otherwise allowed, as applicable to zoning district.”*** However, the City Manager no longer has this authority because as noted below all COVID public health orders have been lifted at the federal, state, and county level.

- On February 28, 2023, Governor Gavin Newsom announced that the COVID State of Emergency ended.
- On April 11, 2023, President Joe Biden signed a bipartisan congressional resolution to bring the U.S. national emergency to respond to the COVID pandemic to a close.
- On May 10, 2023, Mendocino County released a notice of the expiration of the County’s COVID Urgency Ordinance 4472, which allowed many temporary business modifications in response to COVID. The notice provided businesses with an opportunity to apply for the appropriate permits by August 8th to retain any temporary modifications to their structures or facilities.

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As there are no public health orders in effect, the City cannot adopt a modified ordinance or resolution relying on this authority to wave zoning requirements for outdoor dining. Consequently, if the City Council wants to continue to allow outdoor dining, you would need to codify outdoor dining into the City's Inland Land Use and Development Code and the City's Coastal Land Use and Development Code.

On May 17th, the Community Development Committee met and discussed this and asked staff to bring the issue forward to the City Council for discussion and policy direction. The City Manager secured the services of Marie Jones Consulting (MJC) to undertake this project in June of 2023.

ANALYSIS:

In order to prepare a new ordinance for the CLUDC and the ILUDC, it would be helpful if the City Council could reflect upon and provide input on the following policy issues with regard to potential zoning code modifications:

1. **Location.** Should outdoor dining be limited to a specific location on a parcel? MJC recommends that outdoor dining pavilions be located behind or to the side of the front façade of a restaurant and that outdoor dining without pavilions be allowed anywhere (front, side, or rear) of the restaurant, as space allows. Further MJC recommends that outdoor dining pavilions and tents comply with setback requirements.
2. **Permitting.** Should outdoor dining be allowed in all zoning districts that allow restaurants and should pavilions be subject to Design Review?
 - a. **Use Permits and Zoning Districts.** Currently, restaurants are permitted by right in the following districts: RM, RH, RVH, and all commercial zoning districts except for Neighborhood Commercial which requires a Use Permit. MJC recommends allowing outdoor dining in the same districts as indoor dining with a Minor Use Permit in order to ensure compatibility with the neighborhood. Outdoor dining facilities could be processed through the Limited Term Permit process, which would allow flexibility with existing zoning code standards but would require annual discretionary reviews and renewals.
 - b. **Design Review.** Pavilions and outdoor tents would be subject to Design Review because there is currently no exception to Design Review for such structures within the ILUDC or CLUDC. Should pavilions be exempt from Design Review or subject to Administrative Design Review? If the latter, the City Council would need to adopt design standards for tents and pavilions.
3. **Size.** The City Council could consider setting a reasonable maximum size for an outdoor dining area. Currently outdoor dining areas within the City range in size from approximately 500 SF to 2,300 SF, with an average size of 1,300 SF (see Table 1). Some restaurants have invested significant funds in outdoor tents, tables, and chairs, so a limitation on size could affect these existing businesses. The City could regulate size in one of three ways:

- a. An outdoor dining area could be limited to a portion of the square footage (SF) of the indoor dining area, which would ensure some proportionality for the outdoor dining area particularly, if the City Council waives or reduces parking requirements and/or capacity fees for outdoor dining. For example, outdoor dining areas could be limited to 50% of the total SF of the indoor dining area.
- b. The City could establish a maximum size for outdoor dining facilities. A cap of 1,300 SF correlates with the size of the largest pavilions and provides seating for 60 to 100 people.
- c. The City could regulate the size of the outdoor dining area through the strict application of existing land use regulations, such as Lot Coverage Ratio and the required onsite parking ratio of 1 space/100 SF. This approach would likely result in fewer outdoor dining areas, as restaurant size is generally constrained more by the City’s parking requirements than any other regulation.

Table 1: Size of Existing Out Door Dining Areas	
Restaurant	Square Feet
Restaurant 1	500
Restaurant 2	1,300
Restaurant 3	2,300
Restaurant 4	700
Restaurant 5	1,700
Restaurant 6	1,400
Average	1,317

- 4. **Parking.** If outdoor dining facilities are required to comply with current parking requirements, an outdoor dining area of 1,300 SF would need to provide 13 new parking spaces in addition to any parking spaces that the outdoor dining area is currently covering. This would make outdoor dining difficult everywhere except for the Central Business District (CBD), which benefits from the moratorium on the parking in-lieu fee. There are two existing restaurants located out of the CBD which would be impacted by parking requirements for outdoor dining.
 - a. Some outdoor dining facilities are located in existing parking lots, which means that an existing restaurant may not have enough parking to meet its current inside seating requirements much less the outside seating. However, all of the existing tents in parking lots are located downtown, which currently has a moratorium on payment of the parking in-lieu fee, which essentially allows businesses within the CBD to avoid providing the required parking for their businesses.
 - b. The City Council could require less or no parking for outdoor dining facilities.
- 5. **Capacity Fees.** Restaurants pay sewer and water capacity fees which are \$50.35/SF, so an average outdoor dining area of 1,300 SF would need to pay capacity fees of \$65,443.
 - a. The City Council could direct staff to develop a rationally prorated capacity fee for open air outdoor dining (e.g., not located in a pavilion) because of lower impacts due to dining being limited to moderate/good weather.
 - b. Restaurants with outdoor dining in pavilions with heaters should pay the standard capacity fee, as their impacts would be identical to indoor dining.
- 6. **Public Safety.** The City and County could consider enforcing standards for electrical, structural, and heating source safety for outdoor dining facilities. Some outdoor dining areas use extension cords and have heaters that are relatively close to tent

structures. The City and/or County could proactively provide inspections to ensure these are safe.

RECOMMENDED ACTION:

Provide policy direction regarding future zoning modification to allow outdoor dining.

ALTERNATIVE ACTION(S):

Provide direction to engage in complaint-driven code enforcement and require all outdoor dining facilities to comply with existing code requirements.

FISCAL IMPACT:

The fiscal impact depends on the City Council’s policy direction. Some considerations include:

- Reducing parking requirements could result in a more parking constrained downtown, which could result in pressure on the City to purchase and develop land for public parking.
- Additional outdoor dining will result in increased sales tax revenues.
- Reducing the sewer/water Capacity Fee would result in the City investing more funds from other sources in capital improvements related to sewer and water infrastructure.

GREENHOUSE GAS EMISSIONS IMPACT:

Greenhouse gas emissions are higher for an outdoor dining area due to heating and lighting the outdoors and/or the pavilion, which are not required to pass Title 24 energy calculations.

CONSISTENCY:

The consistency of any proposed ordinance with the General Plan will be determined upon completion of the first draft of the ordinance.

IMPLEMENTATION/TIMEFRAMES:

July – First draft of proposed ordinance changes to be brought forward to City Council for review and comment.

September – Prepare and circulate CEQA document.

October – Recommendation from Planning Commission.

November – First reading of the ordinance by City Council.

December – Second reading of the ordinance and adoption by City Council.

January – Ordinance goes into effect.

ATTACHMENTS:

None

NOTIFICATION:

1. “Notify Me” subscriber lists: Fort Bragg Downtown Businesses and Economic Development Planning.