

## **RESOLUTION NO. PC 05-2024**

### **RESOLUTION OF THE FORT BRAGG PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL SUBMIT AN LCP AMENDMENT APPLICATION TO THE COASTAL COMMISSION TO AMEND CHAPTER 17.42.190– RESTAURANTS OF DIVISION 17 OF THE FORT BRAGG MUNICIPAL CODE TO ESTABLISH REGULATIONS AND STANDARDS FOR OUTDOOR DINING**

**WHEREAS**, California Constitution Article XI, Section 7, enables the City of Fort Bragg (the “City”) to enact local planning and land use regulations; and

**WHEREAS**, the authority to adopt and enforce zoning regulations is an exercise of the City’s police power to protect the public health, safety, and welfare; and

**WHEREAS**, the City of Fort Bragg (“City”) adopted a General Plan in 2002 which established policies for all lands within Fort Bragg city limits and its sphere of influence; and

**WHEREAS**, the City adopted a Coastal General Plan (“Coastal GP”) as the Land Use Plan portion of the Local Coastal Program on May 12, 2008 which established policies for all land within the Fort Bragg Coastal Zone; and

**WHEREAS**, in August 2008 the California Coastal Commission certified the City’s Local Coastal Program (LCP) which includes the Coastal GP as the Land Use Plan; and

**WHEREAS**, the City Council adopted Resolution 3162-2008 on May 12, 2008, adopting the Coastal General Plan; and

**WHEREAS**, the City adopted a Coastal Land Use and Development Code in 2008 as the implementing portion of the Local Coastal Program on May 12, 2008, which established all land use regulations for the Coastal Zone; and

**WHEREAS**, the Coastal General Plan includes policies to: (1) advance the orderly growth and development of the City’s Coastal areas; (2) protect coastal resources; (3) incorporate sustainability into the development process so that Fort Bragg’s coastal resources and amenities are preserved for future generations; (4) respond to current environmental and infrastructure constraints; (5) protect the public health, safety and welfare; and (6) promote fiscally responsible development; and

**WHEREAS**, in May of 2020, due to the COVID-19 Pandemic 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;” and

**WHEREAS**, the City of Fort Bragg relaxed standards so that outdoor dining could be established during the pandemic and a number of restaurants erected outdoor dining facilities which have proven to be very popular; and

**WHEREAS**, on February 28, 2023, Governor Gavin Newsom announced that the COVID-19 State of Emergency ended; and

**WHEREAS**, on April 11, 2023, President Joe Biden signed a bipartisan congressional resolution to bring the U.S. national emergency to respond to the COVID-19 pandemic to a close; and

**WHEREAS**, on May 10, 2023, the Mendocino County Building Department released a notice of the expiration of the County's COVID-19 Urgency Ordinance 4472 which allowed many temporary business modifications in response to COVID-19. The notice provided businesses with an opportunity to apply for the appropriate permits to retain any temporary modifications to their structures or facilities; and

**WHEREAS**, the City desires to ensure that outdoor dining can continue in Fort Bragg in a safe and enjoyable manner; and

**WHEREAS**, the Community Development Committee held a duly noticed public hearing on May 17, 2023, to discuss recommending regulations to establish a method for outdoor dining to continue even as state regulations allowing outdoor dining during the COVID-19 Pandemic were set to expire; and

**WHEREAS**, on June 26, 2023, City Council received a report and provided direction to staff regarding future zoning modifications to allow outdoor dining; and

**WHEREAS**, the "activities and approvals by a local government necessary for the preparation and adoption of a local coastal program or long range development plan" pursuant to the California Coastal Act are statutorily exempt from compliance with CEQA, and this statutory exemption "shifts the burden of CEQA compliance from the local agency to the California Coastal Commission" (CEQA Guidelines § 15265 (c)); and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on January 10, 2024, to consider the Zoning Code Amendment, accept public testimony and continued consideration of the recommended amendments to January 31, 2024; and

**NOW, THEREFORE, BE IT RESOLVED** that the City of Fort Bragg Planning Commission, based on the entirety of the record before it, which includes without limitation, CEQA, Public Resources Code §21000, et seq. and the CEQA Guidelines, 14 California Code of Regulations §15000, et seq.; the Fort Bragg Coastal General Plan; the Fort Bragg Coastal Land Use and Development Code; the Project application; all reports and public testimony submitted as part of the Planning Commission meeting of January 10, 2024 and January 31, 2024, and Planning Commission deliberations; and any other evidence (within the meaning of Public Resources Code §21080(e) and §21082.2), the Planning Commission of the City of Fort Bragg does hereby make the following findings and determinations:

**SECTION 1: COASTAL LAND USE AND DEVELOPMENT CODE AMENDMENT FINDINGS**

Pursuant to Fort Bragg Municipal Code Section 17.94.060, the Planning Commission recommends that the City Council make the following findings for adoption of the proposed amendments to the Fort Bragg Coastal Land Use and Development Code:

- a. The proposed amendment is consistent with the Coastal General Plan and any applicable specific plan; and
  - 1. The proposed project is consistent with the land use designations of the Land Use Element of the Coastal General Plan (CGP) because the amendment would allow outdoor dining in the same land use designations as restaurants.
  - 2. The proposed amendment is consistent with the following applicable General Plan policies: Policy LU-3.1, Policy LU-5.7, Policy LU-10.2, Policy LU-10.4, Policy PF-1.2, Policy PF-2.1, Policy CD-1.1, Policy CD-2.1, Policy CD-2.5, Policy CD-3.2, Policy CD-3.3, Policy CD-3.4, Policy CD-1.9, Policy SF-5.1.
- b. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and
  - 1. As revised, the proposed amendment includes sufficient safeguards to protect the health and safety of diners and of outdoor dining facilities. Outdoor dining will improve convenience by increasing dining options and providing for outdoor dining for people with immune issues where indoor dining may be unsafe due to COVID-19 and other communicable illness. The amendment furthers the public interest and welfare as indicated by the continued popularity of outdoor dining.
- c. The proposed amendment is internally consistent with other applicable provisions of this Development Code.
  - 1. The Proposed Amendment is consistent with CLUDC standards as amended as analyzed in the consistency analysis.

**SECTION 2: GENERAL FINDINGS:**

- a. The foregoing recitals are true and correct and made a part of this Resolution; and
- b. The documents and other material constituting the record for these proceedings are located in the Community Development Department.

**BE IT FURTHER RESOLVED** that the Fort Bragg Planning Commission does hereby recommend that the City Council submit and LCP Amendment Application to the Coastal Commission to amend Division 17 to the Fort Bragg Municipal Code to Amend Chapter 17.42.190 – *Restaurants* to establish regulations and standards for outdoor dining, as delineated in Attachment A.

**BE IT FURTHER RESOLVED** that this Resolution shall become effective immediately upon its passage and adoption.

The above and foregoing Resolution was introduced by Commissioner Deitz seconded by Commissioner Neils, and passed and adopted at a regular meeting of the Planning Commission of the City of Fort Bragg held on the 31<sup>st</sup> day of January 2024, by the following vote:

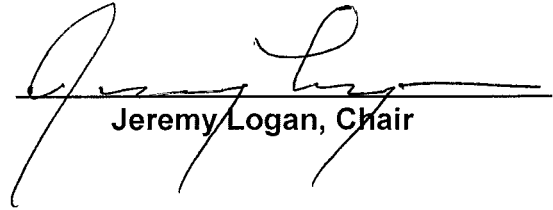
**AYES:** Deitz, Neils, Stavely, Jensen, Logan

**NOES:**

**ABSENT:**

**ABSTAIN:**

**RECUSE:**



Jeremy Logan, Chair

**ATTEST:**

*Maria Flynn*  
Maria Flynn, Administrative Assistant  
Community Development Department

# Planning Commission Resolution Attachment A: LCP 3-23 “Outdoor Dining” Zoning Code Amendments

## Draft Ordinance: CLUDC Outdoor Dining

Amend 17.21.030 - Allowed Land Uses and Permit Requirements for Residential Zoning Districts, Table 2-1 as follows (amendment shown in red text):

TABLE 2-1 Allowed Land Uses and Permit Requirements for Residential Zoning Districts	P	Permitted Use, Zoning Clearance required					
	MUP	Minor Use Permit required (see Section <a href="#">17.71.060</a> )					
	UP	Use Permit required (see Section <a href="#">17.71.060</a> )					
	S	Permit requirement set by Specific Use Regulations					
	—	Use not allowed					
LAND USE (1)	PERMIT REQUIRED BY DISTRICT						Specific Use Regulations
	RR	RS	RL	RM	RH	RVH	
Restaurant, Café, Coffee Shop	-	-	UP	UP	UP	UP	17.42.165
Outdoor Dining	-	-	MUP	MUP	MUP	MUP	17.42.165

Amend 17.22.030- Allowed Land Uses and Permit Requirements for Commercial Zoning Districts, Table 2-1 as follows (amendment shown in red text):

TABLE 2-6 Allowed Land Uses and Permit Requirements for Commercial Zoning Districts	P	Permitted Use, Zoning Clearance required				
	MUP	Minor Use Permit required (see Section <a href="#">17.71.060</a> )				
	UP	Use Permit required (see Section <a href="#">17.71.060</a> )				
	S	Permit requirement set by Specific Use Regulations				
	—	Use not allowed				
LAND USE (1)	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	CN	CO	CBD	CG	CH	
Outdoor Dining	MUP	MUP	MUP	MUP	MUP	18.42.165

Amend 17.36.040 - Number of Parking Spaces Required, Table 3-7 as follows (amendment shown in red text):

TABLE 3-7 - PARKING REQUIREMENTS BY LAND USE (Continued)

Land Use Type: Retail Trade	Vehicle Spaces Required
All "Retail Trade" and general retail uses listed in § 17.22.030, Table 2-6, except for the following:	1 space for each 400 sf of floor area, plus 1 space for each 600 sf of outdoor sales area.
Restaurant, cafe, coffee shop	1 space for each 4 seats; or 1 space for each 200 sf of floor area, whichever would yield more spaces.
Outdoor Dining	No parking required

Amend 17.42.190 of the CLUDC as follows (amendment shown in red text):

**17.42.190 – Restaurants & Outdoor Dining**

**A. Grease and Oils.** The following standards for restaurants are intended to regulate the disposal of grease and oils for the protection of the City of Fort Bragg sewage treatment plant and the environment:

1. Operating standards. Restaurants shall comply with the following operating standards:
  - a. Installation and maintenance of grease trap/interceptor. Grease interceptor installation and maintenance must comply with the City’s Food Service Establishment Wastewater Discharge Permit and the City’s Municipal Code section regarding fats, oil and grease control.
  - b. Washing of restaurant floor mats, exhaust filters. Restaurant floor mats and exhaust filters shall be washed in a sink or wash area that drains to the sanitary sewer, or collected wastewater from such washing shall be discharged to the sanitary sewer.

**B. Outdoor Dining.** The following standards are for outdoor dining facilities and are intended to regulate for the safe and compatible operation of outdoor dining facilities. Outdoor Dining Facility may consist of tables and chairs for dining with or without a pavilion, tents and/or umbrellas.

1. **Coastal Development Permit.** A Coastal Development Permit is required for an Outdoor Dining Facility that includes the erection of a pavilion or tent.
2. **Allowed as part of Indoor Dining.** These regulations apply only to

restaurants that have an indoor dining component. Entirely outdoor restaurants are not permitted.

**3. Location, Setbacks & Height Limits.**

- a. Outdoor dining pavilions and tents shall comply with all relevant setback and height limits of the zoning district.
- b. Pavilions and tents may be located behind or to the side of the associated restaurant. Outdoor dining that is not in a pavilion or tent may be in front of the associated restaurant, where the front of the building is the facade facing the primary street.
- c. Outdoor dining facilities shall be located on previously developed areas such as a parking lot, sidewalk, or hardscape area. Outdoor dining may not result in a net loss of more than 10% of parking spaces unless otherwise allowed by this development code.
- d. Outdoor dining must be located a minimum of 50 feet from any environmentally sensitive area, wetland or rare plant community, unless it is located in an area that has been developed with authorization through a Coastal Development Permit.
- e. Outdoor dining pavilions and tents shall be sited so that they do not add to stormwater runoff volume or peak runoff rates.
- f. Outdoor dining pavilions and tents shall not be located in an area that would impact scenic views or resources as seen from a public right of way.
- g. Outdoor dining is permissible on the City's sidewalks with Encroachment Permit approval.

**4. Size Limits.** Outdoor dining facilities shall be limited to 1,300 SF. A larger size may be approved with a Minor Use Permit.

**5. Objective Design & Safety Criteria.** Outdoor dining pavilions and tents are subject to Administrative Design Review and shall comply with the following criteria:

- a. Outdoor dining facilities shall be confined to the area shown on the approved site plan.
- b. Where umbrellas, tents or pavilions are proposed, a vertical clearance of at least 7 feet must be maintained.
- c. Utilities, Heating & Lighting
  - I. The use of heating devices and electrical extension cords and lighting are subject to review and approval by the Community Development Director and the Fire Marshal.
  - II. Portable Heaters/Space Heaters are permitted if approved for outdoor use, located in accordance with the manufacturer's recommendations, and located at least two feet from the edge or roof of any umbrella canvas, tent, pavilion, foliage, or any other flammable object or material.
  - III. All lighting located within or outside of outdoor dining pavilions shall be downward facing and night sky compliant.
- d. Outdoor Dining shall not interfere with building ingress/egress.
  1. ADA Accessibility. The outdoor dining area shall be designed,

- constructed and/or conform to the applicable provisions, rules, regulations and guidelines of the California Building Code and Americans with Disabilities Act.
2. Outdoor Dining facilities shall not conflict with use of existing bicycle parking and access.
  - e. Moveable barriers shall be of solid, durable materials. Preferred barriers include removable fences, freestanding fences, hedges, planters, trees, removable columns, and pavilion or tent structures. Fabric inserts, chain link fencing, plastic, vinyl, chicken wire and cyclone fencing are not permitted.
  - f. Pavilion and tent colors should either be white or a color which is compatible with the colors of the restaurant building.
6. **Operating Standards.** Outdoor dining shall comply with the following operating standards:
- a. No amplified music after 9:00 pm.
  - b. No new service after 9:00 pm.
  - c. Hours of operation shall not begin prior to 7:00 am or extend later than 10:00 pm.
  - d. Smoking is prohibited in outdoor dining areas.
  - e. Outdoor dining, food preparation and cooking is only permissible in compliance with the California Retail Food Code and with the approval of the Mendocino County Division of Environmental Health.
  - f. Pavilions must be inspected by the Fire Marshal who shall submit a letter to the City that pavilion and associated equipment and furnishings are safe and in good repair at least once every five years or as determined by the Community Development Director.
  - g. Establishments that serve alcoholic beverages in the outdoor dining area must meet all requirements of the Alcoholic Beverage Control Board and any other federal, state, or local laws and regulations governing the sale and consumption of alcoholic beverages.

#### 18.100 Definitions Amendments

*In order to support the required code updates, the following addition to the definitions in ILUDC Section 18.100.020 are recommended:*

**Outdoor Dining Facility.** Outdoor dining may consist of a defined area with tables and chairs for dining with or without a temporary pavilion, tent and/or umbrellas, and adjacent to and on the same parcel and serviced by a restaurant with an indoor dining component. Outdoor bars are not outdoor dining facilities.