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24-534 - Staff Report Outdoor Dining 1-31- 2024

Receive Report and Consider
Adopting Amendments to
Register
ILUDC & CLUDC Regarding
Outdoor Dining. Continued
from 1-10-2024

PROJECT INFORMATION

APPLICATION #:	ILUDC Amendments 3-23 (ILUDC 3-23) and LCP Amendment 3-23 (LCP 3-23)
APPLICANT:	City of Fort Bragg
PROJECT:	Receive Report, Hold a Public Hearing, and 1) Adopt a Resolution of the Fort Bragg Planning Commission Recommending that the City Council Amend <i>Chapter 18.42.165 – Restaurants</i> of Division 18 of the Fort Bragg Municipal Code to Establish Regulations and Standards for Outdoor Dining; and 2) Adopt a Resolution of the Fort Bragg Planning Commission Recommending that the City Council Submit an LCP Amendment Application to the Coastal Commission to Amend <i>Chapter 17.42.190– Restaurants</i> of Division 17 of the Fort Bragg Municipal Code to Establish Regulations and Standards for Outdoor Dining
LOCATION:	Commercial Zoning Districts in the Coastal Zone and the Inland Area.
APN:	Various
LOT SIZE:	Various
ZONING:	CN (Neighborhood Commercial), CG (General Commercial), CO (Office Commercial), CH (Highway and Visitor Commercial), CBD (Central Business District), RM (Medium Density Residential), RH (High Density Residential); RVH (Very High Density Residential).
ENVIRONMENTAL DETERMINATION:	A Mitigated Negative Declaration (MND) has been prepared for the amendments to the Inland Land Use and Development Code. The proposed amendment to the Coastal Land Use and Development Code is part of the City’s Local Coastal Program and will be submitted to the California Coastal Commission for certification. Therefore, the CLUDC Amendment is statutorily exempt from further environmental review under CEQA Guidelines 15265 Adoption of Coastal Plans and Programs.

BACKGROUND

The Mendocino County Health Officer, Dr. Noemi Doohan, declared a local health emergency on March 4, 2020, and the Community embarked on a strategy to reduce transmission and hospitalizations over the following three-year period. During COVID, many Fort Bragg businesses made significant operational adaptations to reduce risk to people from the COVID-19 Pandemic. One of those adaptations has proven to be a benefit to businesses and the community, namely open-air dining. Specifically, during the COVID-19 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-19, and many also found it a pleasant experience. While

the fight against the COVID Pandemic 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-19 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.”*

The City no longer has this authority because related public health orders have been lifted at the federal, state and county level.

- On February 28, 2023, Governor Gavin Newsom announced that the COVID-19 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-19 pandemic to a close.
- On May 10, 2023, Mendocino County released a notice of the expiration of the County’s COVID-19 Urgency Ordinance 4472 which allowed many temporary business modifications in response to the Pandemic.

As there is no longer a public health emergency, the City cannot adopt a modified emergency ordinance relying on this authority to waive zoning requirements for outdoor dining.

On May 17, 2023, the Community Development Committee met and discussed this issue and asked the City to bring the issue forward to the City Council for discussion and policy direction. The City secured the services of Marie Jones Consulting (MJC) to undertake this project in June of 2023. On June 26, 2023 the City Council met and discussed this issue and provided the following direction to MJC regarding outdoor dining regulations.

1. **Location.** The City Council directed to not limit outdoor dining to any specific location on a parcel, but that all outdoor dining in pavilions and tents must comply with setback requirements.
2. **Zoning Districts, Minor Use Permits and Size.** The City Council directed that outdoor dining be allowed by right in all zoning districts where indoor dining is currently allowed by right, namely: RM, RH, RVH and all commercial zoning districts. Further, the City Council indicated that a Minor Use Permit should be required for any outdoor dining facilities of more than 1,300 SF in size.
3. **Design Review.** The City Council directed that pavilions and outdoor tents should meet minimum design criteria, much like a sign, with over-the-counter objective review criteria.
4. **Parking.** The City Council recommended that additional parking should not be required for outdoor dining.
5. **Capacity Fees.** Restaurants pay sewer and water capacity fees which are

\$50.35/SF, so a large outdoor dining area of 1,300 SF would need to pay capacity fees of \$65,443. The City Council recommended that no capacity fees be charged for outdoor dining.

6. **Outdoor Dining on Public Property.** The City Council recommended that outdoor dining be allowed on sidewalks through the encroachment permit process.
7. **Public Safety.** The City Council directed staff to work with the County to identify an effective building permit process for outdoor dining facilities in pavilions with lights and/or heaters.

City Council direction to exempt all outdoor dining facilities from permitting resulted in a number of challenges while preparing the MND and the General Plan Consistency analysis. A building permit is not required to put up a pavilion or tent because it is a temporary structure. Absent the need to obtain a building permit or any planning permit, the only method to ensure that a proposed project complies with the ordinance is through code enforcement, which may cause problems if someone installed a pavilion only to find out after the fact that it does not comply with the ordinance. There are three potential permits that could be required for outdoor dining.

- **Limited Term Permit.** A limited term permit (LTP) is obtained for a short period (less than a year) and would have to be reapplied for each year. An LTP is not suitable for outdoor dining facilities where a restaurateur may want to establish outdoor dining on a permanent basis.
- **Minor Use Permit.** This would be a good permit to require if one wants to determine the compatibility of the facility with other uses. However, this is likely not useful for outdoor dining because it would be part of a restaurant which has been deemed to be compatible.
- **Administrative Design Review.** This is the best permitting choice because most issues with a tent will likely relate to design and visual impacts.

On January 10, 2024, the Planning Commission held a public hearing and discussed this item at length. New language was added to this staff report as a consequence of the January 10th meeting and is noted in blue text. The Planning Commission recommended the following changes to the draft ordinance:

1. **Permits.** A Minor Use Permit and Administrative Design review should be required for all outdoor dining facilities located within a pavilion or other tent structure. This is a relatively simple and inexpensive permitting process which would allow residents and businesses located within 300 feet of the outdoor dining pavilion to raise issues if they have them regarding noise, parking, safety, etc. It would also allow the City to place special conditions on the permits to minimize negative impacts to the neighboring businesses and residents. Additionally, the administrative design review process would allow City staff to address how the pavilion or tent structure affects the views to the property and ensure that the pavilions are compatible with the neighborhood or commercial district. Furthermore, the Planning Commission directed that outdoor dining is not appropriate in the Low Density Residential (RL) zoning district even though restaurants are allowed in RL districts.

2. **Capacity Fees.** The Planning Commission recommends that the City Council should not eliminate capacity fees for outdoor restaurants, as to do so is not equitable to the businesses who have already paid capacity fees for their indoor dining establishments but either cannot or do not want to offer outdoor dining. The Planning Commission noted that by not charging a capacity fee for outdoor dining, the City would give a competitive disadvantage to the many restaurants who have already paid capacity fees. The unfairness is compounded for businesses that have already paid capacity fees for outdoor dining facilities established prior to the pandemic. Instead, the Planning Commission recommended a data driven mechanism to determine the correct proportional share of capacity fees that should be paid for outdoor dining facilities. The Planning Commission directed MJC to prepare an analysis that includes a rational basis for charging capacity fees for outdoor dining.

MJC analyzed water unit data from the City of Fort Bragg. The analysis first examined net change in restaurant water use/year from 2018 through 2023 to determine a baseline water use trendline, as the pandemic resulted in significant economic disruption across all restaurants (Table 1). Next using Google Earth, MJC determined the years that tents were utilized at each restaurant with outdoor dining. Then MJC determined the water use change for those restaurants with outdoor dining for each year relative to the prior year (Table 2). Finally, MJC determined the net difference between water use for restaurants with outdoor dining versus restaurants with only indoor dining (Table 1).

Table 1: Comparison of Water Use - Restaurants with & without Outdoor Dining					
Year of Read	Total Water Consumption (Units)	Percent Change All Restaurants	% Change Consumption Restaurants with Outdoor Dining	% Change Consumption all Indoor Restaurants	Net Difference
2018	11,868				
2019	10,846	-9%	NA	-9%	NA
2020	7,853	-28%	NA	-28%	NA
2021	9,027	15%	20%	-27%	47%
2022	8,917.23	-1%	8%	-24%	32%
2023	8,836.88	-1%	17%	-12%	29%
Average Last three years		4%	15%	-21%	36%
Source: City of Fort Bragg dept of Finance, 2024; MJC 2024					

Table 2: Water Units Per Year for Restaurants with Some Outdoor Dining (denoted by green shading)							
Restaurant Name	Year w/ Outdoor Dining	2018	2019	2020	2021	2022	2023
Dennys	2021	106	799	401	404	419	428
KC Salt Water Grill	2023						
Café 1	2021	171	145	106	131	117	126.85
Brewery	2021-2023	1,297	1,232	648	746	561	577
Mayan Fusion	2021-2023	317	392	317	346	291	258.23
Laurel St. Restaurant - Seaside	2022	204	203	139	173	165.62	146
Vcanto	2021-2023	331	242	182	252	246.83	144
Noyo River Lodge	2021-2022	800	832	665	926	837	803.7
Homestyle Café	2021-2022	198	185	145	150	124.72	134
Cliff House / Noyo River Grill	2021	468	23	158	189	closed	344
	Total	3892	4053	2761	3317	2762.17	2961.78
	% change		4.1%	-31.9%	20.1%	-16.7%	7.2%

Source: City of Fort Bragg dept of Finance, 2024; MJC 2024

Overall, restaurants with outdoor dining generally use much more water than indoor restaurants. The average water use for a restaurant with outdoor dining was 407 units in 2021, while the average water use for indoor-only restaurants was 180 units of water/year. This differential existed prior to the pandemic and outdoor dining: in 2019, restaurants that would later have outdoor dining (once the pandemic started) used an average of 338 units of water/year while indoor-only restaurants used an average of 225 units of water use. Restaurants with high initial water use were more likely to embrace outdoor dining. In other words, popular restaurants wanted to expand their number of tables, dining service and revenues and therefore opened outdoor dining pavilions. Some pavilions were opened well after COVID restrictions were withdrawn.

Based on the available information, over the past three years, restaurants with outdoor dining increased their average water use by 15% per year, while restaurants with only indoor dining saw an average decrease in water use of -21%, the average difference was 36% (Table 1). Outdoor dining is popular. Restaurants with outdoor dining experienced significant water use increases, which presumably was associated with more patrons and revenues. On the other hand, over this period, even with robust tourism occupancy in Fort Bragg, indoor dining only restaurants have had a significant and ongoing reduction in water use, perhaps indicating that their customer base is leaking to other restaurants with outdoor pavilions. Therefore, the evidence supports the Planning Commission’s recommendation for an outdoor dining capacity fee (based on this evidence in association with the new Capacity Fee study). The ordinance includes recommended revised language to this effect.

- Parking.** The Planning Commission expressed concern about the potential impact of outdoor dining on parking availability and recommends that new outdoor dining facilities not be permitted where they occupy more than 10% of parking spaces that are required to serve the existing indoor restaurant. The Planning Commission expressed concern that outdoor dining that consumes existing parking spaces will impact parking availability for adjacent businesses and residents, especially as this new ordinance does not require additional parking for the new outdoor dining area. Therefore, the Planning Commission recommended that outdoor dining facilities not

result in the temporary removal of more than 10% of the minimum required parking for the indoor dining facility.

4. **Inspection.** Pavilions and tents are temporary structures, and are typically not subject to building codes. As they are likely to deteriorate in salt air and potentially result in unsafe or unsightly structures, the Planning Commission recommends that a schedule of inspection be undertaken (perhaps the Fire Inspector or a third-party independent inspector) to ensure that such facilities are in good repair. Canvas in an outdoor environment typically lasts from five to ten years. Therefore, the Planning Commission recommends that each outdoor pavilion and associated equipment and furnishings be regularly inspected by a third party to certify to the City that they are safe and in good condition.
5. **Coordinate with County Environmental Health Requirements.** The Planning Commission recommended that the City coordinate with the County Division of Environmental Health to determine if they have any requirements or limitations which should be included in the ordinance. Manuel Ramirez of Mendocino County Division of Environmental Health was contacted, and he noted that all food preparation and service in an outdoor dining pavilion must meet the California Retail Food Code.

The attached draft ordinances have been revised to reflect the Planning Commission's recommendations.

Additionally, as a result of preparation of the MND and the General Plan Consistency review many other changes were also made to the ordinance.

Mitigated Negative Declaration. The MND includes the following five Mitigation Measures to ensure that outdoor dining would have a less than significant impact on the environment.

Mitigation Measure Aesthetics-1. The following additional requirements shall be added to the regulations for outdoor dining to reduce the potential impact on aesthetics to less than significant.

Setbacks & Height Limits. Outdoor dining pavilions and tents shall comply with all relevant setbacks and height limits of the zoning district in which they are located. Pavilions can be ~~in front of,~~ behind or to the side of the associated restaurant. Outdoor dining that is not located within a pavilion may be in front of the building. Where the front of the building is the facade facing the primary street.

Mitigation Measure Aesthetics-2. The following additional requirements shall be added to the regulations for outdoor dining to reduce the potential impact on aesthetics to less than significant.

Objective Design & Safety Criteria.

All lighting located within or outside of outdoor dining pavilions shall be downward facing and night sky compliant.

Mitigation Measure Bio-1. The following requirements shall be added to the regulations for outdoor dining to reduce the potential impact on biological resources to less than significant.

Location, Setbacks, and Height Limits. Outdoor dining pavilions and tents

shall comply with all relevant setbacks and height limits of the zoning district in which they are located. **Outdoor Dining Facilities shall be located on previously developed areas (such as a parking lot, sidewalk, or landscaped area) or located a minimum of 50 feet from any Environmentally Sensitive area, wetland, or rare plant community.**

Mitigation Measure Trans-1: Revise the proposed zoning ordinance as follows:
Objective Design & Safety Criteria. Outdoor dining pavilions and tents shall comply with the following objective criteria:

Outdoor Dining facilities shall not conflict with use of existing bicycle parking and access.

Mitigation Measure Trans-2: Revise the proposed zoning ordinance as follows:
Objective Design & Safety Criteria. Outdoor dining pavilions and tents shall comply with the following objective criteria:

Outdoor Dining facilities shall not conflict with emergency access as determined by the Fire Marshal.

These mitigation measures have been incorporated into the attached resolutions.

General Plan Consistency. The consistency analysis identified many inconsistencies between the proposed amendment and various policies of the Coastal General Plan, the General Plan, the CLUDC and the ILUDC. It also identifies various approaches that can be used in revising the ordinances so that the inconsistencies and conflict are eliminated (please see Attachment 3 for the complete analysis). To avoid inconsistencies with the code, the amendment was modified per the following recommendations:

Recommended Modification	Conflicts which are resolved
Coastal Amendment	
Require Coastal Development Permit for outdoor dining.	Construction of a pavilion is considered development in the Coastal Act, and all development is required to obtain a CDP. Additionally, there are many policies of the Coastal General Plan that would conflict with an ordinance that does not require a CDP, especially policies and regulations regarding impacts to views, Environmentally Sensitive Habitat Area, and stormwater.
Both Amendments	
Revise ordinance to prohibit pavilions in front of buildings along the primary building frontage.	This change is necessitated due to conflicts with General Plan requirements to protect the character of the downtown.
Amend Table 3-7 to indicate “no parking required” for outdoor dining.	This change is required to ensure no conflict between the draft ordinance and Table 3-7.
Require that pavilions only be located on a parking lot, sidewalk, or hardscape area.	This change eliminates conflicts with regulations and policies regarding stormwater and Environmentally Sensitive Areas.

Require that outdoor dining facilities be located a minimum of 50 feet from any environmentally sensitive area, wetland, or rare plant community.	This change eliminates conflicts with sensitive biological resources policies and regulations.
Outdoor dining pavilions and tents shall be sited so that they do not add to stormwater runoff volume or peak runoff rates.	This change eliminates conflicts with regulations regarding stormwater.
Outdoor dining pavilions and tents shall not be in an area that would impact scenic views or resources as seen from a public right of way.	This change eliminates conflicts with policies protecting scenic resources.
Consider requiring administrative design review for pavilions.	This change eliminates conflicts with Design Review regulations which require design review for commercial structures greater than 250 square feet.
Require that all lighting located within or outside of outdoor dining pavilions be downward facing and night sky compliant.	This change eliminates conflicts with policies regarding scenic resources and design review.
Require that outdoor dining facilities don't interfere with bicycle access and parking	This change eliminates conflicts with circulation policies in the General Plan.
Require that pavilion and tent colors should either be white or a color which is compatible with the colors of the restaurant building.	If administrative design review is not required, this minimal requirement could reduce potential design conflicts between a pavilion and its associated building.
Remove Capacity fee exemption.	The proposed exemption from paying capacity fees conflicts with a General Plan policy. Additionally, at this time the City has a de facto, across the board, exemption from capacity fees while the City's new capacity fee analysis is prepared.

RECOMMENDED ACTION:

1. Hold a Public Hearing and Consider Adopting a Resolution of the Fort Bragg Planning Commission Recommending that the City Council Amend Chapter 18.42.165 – Restaurants of Division 18 of the Fort Bragg Municipal Code to Establish Regulations and Standards for Outdoor Dining.
2. Hold a Public Hearing and Consider Adopting a 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

ALTERNATIVE ACTION(S):

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

ENVIRONMENTAL ANALYSIS:

On December 7, 2023, a Notice of Intent to Adopt was published. Beginning December 7 through December 27, 2023, a draft Mitigated Negative Declaration was available for review and comment (Attachment 4). As of December 29, 2023, no comments were received. The Planning Commission will not adopt a resolution regarding the MND because the Planning Commission is only providing a recommendation.

FISCAL IMPACT:

The fiscal impact will depend on the 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.
- Waiving the Capacity Fee for outdoor dining 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 outdoor dining 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 has been analyzed in Attachment 3.

IMPLEMENTATION/TIMEFRAMES:

December– Prepared and circulated CEQA document.

January – Recommendation from Planning Commission.

February – First reading of the ordinance by City Council.

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

March – Ordinance goes into effect.

ATTACHMENTS:

1. Resolution of the Fort Bragg Planning Commission Recommending that the City Council Amend Chapter 18.42.165 – Restaurants of Division 18 of the Fort Bragg Municipal Code to Establish Regulations and Standards for Outdoor Dining.
2. 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
3. General Plan and Zoning Ordinance Consistency Analysis
4. Mitigated Negative Declaration

NOTIFICATION:

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

2. Restaurants with outdoor dining: Craving Grill, Cucina Verona, KW SaltWater Grill, Mayan Fusion, North Coast Brewery, Noyo Harbor Inn, Overtime Brewery, Piaci's Pub & Pizzeria