

**BEFORE THE CITY COUNCIL OF THE CITY OF FORT
BRAGG**

**AN ORDINANCE AMENDING CHAPTER
18.42.165 – “RESTAURANTS” of DIVISION
18 OF THE FORT BRAGG MUNICIPAL CODE
(ILUDC 3-23) TO ESTABLISH REGULATIONS
AND STANDARDS FOR OUTDOOR DINING**

ORDINANCE NO. XXX-2024

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 an Inland General Plan and certified an Environmental Impact Report Addendum (“EIR Addendum”) for the General Plan on December 2, 2012; and

WHEREAS, the City adopted an Inland Land Use and Development Code and Negative Declaration on February 10, 2014; and

WHEREAS, the adoption of an Inland Land Use and Development Code is necessary to: 1) provide a regulatory framework for implementation of the Inland General Plan; 2) to implement new State planning and land use requirements; and 3) update zoning regulations in accordance with City Council policy direction; and

WHEREAS, in May 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 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 26, 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; and 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 special meeting 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 modification to allow outdoor dining; and

WHEREAS, pursuant to the California Environmental Quality Act (“CEQA”) pursuant to Section 15074 of the CEQA Guidelines, a Mitigated Native Declaration (MND) was prepared and circulated for public comment for the zoning code amendment; and

WHEREAS, a Notice of Intent to Adopt an MND was published on December 7, 2023, and the twenty-day review period was from December 7 through December 27, 2023; and

WHEREAS, the Planning Commission held a duly noticed public hearing on January 10, 2024 and January 31, 2024 to consider the Zoning Code Amendment, accept public testimony and adopted a resolution recommending that City Council adopt a zoning amendment to establish regulations for outdoor dining; and

WHEREAS, the City Council held a duly noticed public hearing on April 8, 2024 to consider the Zoning Code Amendment, and accept public testimony regarding a zoning amendment to establish regulations for outdoor dining; and

NOW, THEREFORE, BE IT RESOLVED that the City of Fort Bragg City Council, 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 Inland General Plan; the Fort Bragg Inland Land Use and Development Code; the Project application; all reports and public testimony submitted as part of the City Council meeting of April 8, 2024 and City Council deliberations; and any other evidence (within the meaning of Public Resources Code §21080(e) and §21082.2), the City Council does hereby make the following findings and determinations:

SECTION 1: LEGISLATIVE FINDINGS

1. The foregoing recitals are true and correct and made a part of this Ordinance.
2. On January 10 and January 31, 2024, the Planning Commission held a properly noticed public hearing to consider recommending the proposed minor amendment to the Inland Land Use and Development Code to the Fort Bragg City Council for adoption and adopted a resolution in support of the City Council's adoption of the amendment to the ILUDC pursuant to Gov. Code Section 65355; and
3. On April 8, 2024 the City Council held a properly noticed public hearing to consider adoption of the minor amendment to the Inland Land Use and Development Code; and
4. The proposed amendment is consistent with the General Plan and any applicable specific plan; and
 - i. The proposed project is consistent with the land use designations of the Land Use Element of the Inland General Plan (CGP) because the amendment would allow outdoor dining in the same land use designations as restaurants.
 - ii. The proposed amendment is consistent with the following applicable General Plan policies: Policy LU-3.1, Policy PF-1.2, Policy PF-2.1, Policy OS-1.2, Policy OS-5.2, Policy OS-6.3, Policy C-1.2, Policy CD-1.1, Policy CD-1.3, Policy CD-2.2, Policy CD-2.3, Policy CD-2.4, Policy CD-5.3, Policy SF-4.1.
5. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City; and
 - i. As revised, and recommended by the Planning Commission, 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.
6. The proposed amendment is internally consistent with other applicable provisions of this Development Code.
 - i. The Proposed Zoning Code Amendment is consistent with ILUDC standards as amended and as analyzed in the consistency analysis.
7. The project is subject to CEQA, and a properly noticed MND was prepared for the project and circulated for public review. No public comments were received regarding the MND in the public comment period. The MND was adopted by resolution by the City Council on April 8, 2024
8. The documents and other material constituting the record for these proceedings are located at the Community Development Department, and

SECTION 2. Based on the foregoing, the City Council does hereby:

Amend 18.21.030 - 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	PERMIT REQUIRED BY DISTRICT							Specific Use Regulations
	RR	RS	RL	RM	RH	RVH		
	LAND USE (1)							
	P	Permitted use, Zoning Clearance required						
	MUP	Minor Use Permit required (see § 18.71.060)						
	UP	Use Permit required (see § 18.71.060)						
	S	Permit requirement set by Specific Use Regulations						
	—	Use not allowed						
Restaurant, Café, Coffee Shop	-	-	UP	UP	UP	UP	18.42.165	
<i>Outdoor Dining</i>	-	-	<i>MUP</i>	<i>MUP</i>	<i>MUP</i>	<i>MUP</i>	<i>18.42.165</i>	

Amend 18.22.030- 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	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	CN	CO	CBD	CG	CH	
	LAND USE (1)					
	P	Permitted use, Zoning Clearance required				
	MUP	Minor Use Permit required (see § 18.71.060)				
	UP	Use Permit required (see § 18.71.060)				
	S	Permit requirement set by Specific Use Regulations				
	—	Use not allowed				
Restaurant, café, coffee shop	UP	P	P	P	P	18.42.165
Second hand store	—	—	—	P	P	
Service station	—	—	—	UP	UP	18.42.180
Shopping center	—	—	—	UP	UP	
<i>Outdoor Dining</i>	<i>MUP</i>	<i>MUP</i>	<i>MUP</i>	<i>MUP</i>	<i>MUP</i>	<i>18.42.165</i>

Amend 18.36.040 - 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	
	Minimum	Maximum
All "Retail Trade" and general retail uses listed in § 18.22.030 , 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.	1 space for each 200 sf of floor area, plus 1 space for each 400 sf of outdoor sales area.
Restaurant, cafe, coffee shop	1 space for each 100 sf of dining area.	1 space for each 40 sf of dining area.
Outdoor Dining	No parking required	No parking required

SECTION 3. 18.42.165 – Restaurants & Outdoor Dining

Chapter 18.42.165 – Restaurants is hereby amended as follows (amendment shown in red text):

18.42.165 – 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. **Allowed as part of Indoor Dining.** These regulations apply only to restaurants that have an indoor dining component. Entirely outdoor restaurants are not permitted.
2. **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 building, where the front of the associated restaurant, where the front of the building is the façade 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 already developed area that was developed with authorization through a 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.
3. **Size Limits.** Outdoor dining facilities of more than 1,300 SF may be approved with a Use Permit.
4. **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.
5. **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 shall meet all requirements of the Alcoholic Beverage Control Board and have a permit for such service as well as any other federal, state, or local laws and regulations governing the sale and consumption of alcoholic beverages.

SECTION 4. 18.100 Definitions Amendments

Chapter 18.100 is hereby amended to include the following definitions:

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. If a facility requires a building permit for the structure, it is not considered outdoor dining. Outdoor bars are not outdoor dining facilities.

Section 6. 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 7. 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 _____ at a regular meeting of the City Council of the City of Fort Bragg held on April 8, 2024, and adopted at a regular meeting of the City of Fort Bragg held on _____, 2024, by the following vote:

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

**Bernie Norvell
Mayor**

ATTEST:

**Diana Sanchez
City Clerk**

PUBLISH: March 28, 2024 and _____, 2024 (by summary).
EFFECTIVE DATE: _____, 2024.