

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

AN ORDINANCE REPEALING CHAPTERS 9.30 (MEDICAL MARIJUANA DISPENSARIES), 9.32 (MARIJUANA CULTIVATION) AND 9.33 (CANNABIS MANUFACTURING), AND REPLACING THEM WITH CHAPTER 9.30 (CANNABIS BUSINESSES) OF TITLE 9 (PUBLIC PEACE, SAFETY AND MORALS) OF THE FORT BRAGG MUNICIPAL CODE

ORDINANCE NO. 953-2019

WHEREAS, the City of Fort Bragg (“City”) previously adopted ordinances governing cannabis manufacturing and medical marijuana dispensaries, but does not allow or regulate other cannabis business types, including distribution, testing laboratories and retail uses within City limits; and

WHEREAS, the State of California has adopted the California Compassionate Use Act, the California Medical Cannabis Regulation and Safety Act, the Adult Use of Marijuana Act, SB 94 and the Medicinal and Adult Use Cannabis Regulation and Safety Act; and

WHEREAS, local governments may choose to adopt new ordinances to permit or license local cannabis businesses; 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; 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, the City Council wishes to establish a uniform regulatory structure for all cannabis businesses in the City in accordance with state law; and

WHEREAS, City Council has determined that Chapter 9.30 should be amended; and

WHEREAS, the City Council finds that the adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, 14 Cal. Code of Regulations, Chapter 3 because this ordinance makes very minor changes to the administrative regulations governing the City’s regulations of commercial cannabis activity and it can be seen with certainty that there is no possibility that the minor changes in the ordinance will have a significant effect on the environment and pursuant to California Business and Professions Code 26055(h), CEQA does not apply because this ordinance requires discretionary review and approval of permits, licenses, and other authorizations to engage in commercial cannabis activity.

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 resolution.
2. Adding Chapter 9.30 to the Municipal Code in the manner described will ensure that cannabis businesses are effectively regulated so that they will not be detrimental to the public interest, health, safety, convenience or welfare of the City.
3. 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.

TITLE 9 – PUBLIC PEACE, SAFETY AND MORALS

Chapter 9.30 entitled **MEDICAL MARIJUANA DISPENSARIES** and Chapter 9.33 entitled **CANNABIS MANUFACTURING** is hereby repealed in its entirety and replaced with the following:

**CHAPTER 9.30
CANNABIS BUSINESSES**

Section

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| 9.30.010 | Purpose and intent |
| 9.30.020 | Definitions |
| 9.30.030 | Limitations on use |
| 9.30.040 | Cannabis business permit |
| 9.30.050 | Applications |
| 9.30.060 | Time limit for filing application for permit |
| 9.30.070 | Term of permits and renewals |
| 9.30.080 | Fees |
| 9.30.090 | Investigation and action on application |
| 9.30.100 | Grounds for rejection of application |
| 9.30.110 | Appeal from Chief of Police decision to reject |
| 9.30.120 | Processing of cannabis business permit |
| 9.30.130 | Operating requirements |
| 9.30.140 | Minors |
| 9.30.150 | Display of permit |
| 9.30.160 | Registration of new employees |
| 9.30.170 | Transfer of permits |
| 9.30.180 | Suspension and revocation – notice |
| 9.30.190 | Suspension and revocation – grounds |
| 9.30.200 | Suspension and revocation – appeals |
| 9.30.210 | Suspension or revocation without hearing |
| 9.30.220 | Separate offense for each day |
| 9.30.230 | Public nuisance |
| 9.30.240 | Criminal penalties |
| 9.30.250 | Civil injunction |
| 9.30.260 | Administrative remedies |
| 9.30.270 | Severability |

9.30.010 PURPOSE AND INTENT.

It is the purpose and intent of this ordinance to regulate Cannabis Businesses in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City.

9.30.020 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a Cannabis Business.

CHIEF OF POLICE. The Chief of Police of the City of Fort Bragg or the authorized representatives thereof.

CANNABIS. All parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds thereof. "Cannabis" also means cannabis as defined by Section 11018 of the Health and Safety Code and by other state law. "Cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

CANNABIS PRODUCT. Cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.

CANNABIS BUSINESS. An entity engaged in the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products for commercial purposes.

CANNABIS OPERATOR or OPERATOR.

The person or entity that is engaged in the conduct of any commercial Cannabis Business.

CANNABIS RETAIL. A Cannabis Business where cannabis or cannabis products are offered, either individually or in any combination, for retail sale directly to customers. The primary use of a Cannabis Retail Business is to sell products directly to on-site customers. Sales may also be conducted by delivery. Also known as a cannabis "dispensary."

CANNABIS RETAIL – DELIVERY ONLY. A Cannabis Business that is closed to the public and conducts sales exclusively by delivery.

COMMERCIAL CANNABIS CULTIVATION. The planting, growing or harvesting, of cannabis plants that is intended to be transported, processed, distributed, dispensed, delivered or sold. Commercial Cannabis Cultivation is prohibited in the City except as a use accessory to a permitted Cannabis Business.

DELIVERY OF CANNABIS. The commercial transfer of cannabis or cannabis products to a consumer. "Delivery" also includes the use of any technology platform owned and controlled by a Cannabis Business Operator that enables customers to arrange for or facilitate the commercial transfer by a permitted Cannabis Retail facility.

EDIBLE CANNABIS PRODUCT. A cannabis product that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code.

PERMITTEE. A person who holds an effective and current permit under this chapter.

PERSON WITH AN IDENTIFICATION CARD. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 et seq., and as may be amended.

PRIMARY CAREGIVER. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 et seq., and as may be amended.

QUALIFIED PATIENT. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 et seq., and as may be amended.

9.30.030 LIMITATIONS ON USE.

- A. Compliance with City Code. Cannabis Businesses shall only be allowed in compliance with this Chapter and all applicable regulations set forth in the City Code, including but not limited to all regulations governing building, grading, plumbing, septic, electrical, fire, hazardous materials, nuisance, and public health and safety.
- B. Compliance with State laws and regulations. Cannabis Businesses shall comply with all applicable state laws and regulations, as may be amended, including all permit, approval, inspection, reporting and operational requirements, imposed by the state and its regulatory agencies having jurisdiction over cannabis and/or Cannabis Businesses. All Cannabis Businesses shall comply with the rules and regulations for cannabis as may be adopted and as amended by any state agency or department including, but not limited to, the Bureau of Cannabis Control, the Department of Food and Agriculture, the Department of Public Health, the Department of Pesticide Regulation, and the Board of Equalization.
- C. Cannabis Businesses shall provide copies of state, regional and local agency permits, approvals or certificates upon request by the City to serve as verification for such compliance.

9.30.040 CANNABIS BUSINESSES PERMIT.

- A. It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City the operation of a Cannabis Business unless the person first obtains and continues to maintain in full force and effect a Cannabis Business Permit from the City and a State license as herein required.
- B. Cannabis Businesses shall be located in compliance with the requirements of the Inland Land Use and Development Code and/or the Coastal Land Use and Development Code, as applicable.
- C. Cannabis Businesses that are subject to the standards in this Chapter shall not be established or maintained except as authorized by the land use permit required by Division 2 of the Inland Land Use and Development Code and/or the Coastal Land Use and Development Code, as applicable. Cannabis Retail and Cannabis Retail – Delivery Only are defined land uses specifically referenced in Article 2 of the Inland Land Use and Development Code (ILUDC). Commercial Cannabis Cultivation is prohibited in the City. The Director shall classify other Cannabis Businesses, including, but not limited to those that involve manufacturing, distribution, processing, storing, laboratory testing, packaging, labeling, and/or transportation for commercial purposes as existing land uses already established by Article 2 and Article 10 of the ILUDC, based on the characteristics of the proposed use. For example, a Cannabis Business proposing to engage in activities requiring a Cannabis Distribution license from the State may be classified as “Wholesaling and Distribution,” and allowable based on the permit and district requirements for the “Wholesaling and Distribution” use in Article 2 of the ILUDC.
- D. Dual Licensing. State law requires dual licensing at the state and local level for Cannabis Businesses. All Cannabis Operators shall therefore be required to obtain a state cannabis license, and shall comply at all times with all applicable state licensing requirements and conditions. Cannabis Businesses shall not be allowed to commence operations until the Cannabis Business can demonstrate that all necessary state licenses and agency permits have been obtained.
- E. Failure to demonstrate dual licensing in accordance with this Chapter shall be grounds for revocation of City approval. Revocation of a local permit and/or a state license shall terminate the ability of the Cannabis Business to operate until a new permit and/or state license is obtained.

9.30.050 APPLICATIONS.

Any application for a Cannabis Business Permit shall be filed with the Chief of Police. The application shall be made under penalty of perjury. Any application for a Cannabis Business permit shall include the following information:

- A. The full name, present address, and telephone number of the applicant;
- B. The address to which notice of action on the application and all other notices are to be mailed;
- C. Previous addresses for the past 5 years immediately prior to the present address of the applicant;
- D. Written proof that the applicant is over 21 years of age;
- E. Photographs for identification purposes (photographs shall be taken by the Police Department);
- F. The cannabis business history of the applicant, including whether the applicant, in previously operating in any city, county, or state under permit, has had a permit revoked or suspended and, if so, the reason therefor;
- G. The name or names of the person or persons having the management or supervision of applicant's business;
- H. Whether the person or persons having the management or supervision of applicant's business have been convicted of a crime(s), the nature of the offense(s), and the sentence(s) received therefor;
- I. A security plan ensuring the safety of employees and visitors from criminal activity, including theft and unauthorized entry;
- J. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the Cannabis Business and the purpose and security of each room or area of operation;
- K. A diagram illustrating the use and coverage of security cameras, security lighting, and necessary access restrictions;
- L. A notarized statement by the property owner certifying under penalty of perjury that he or she has given consent to the applicant to operate a Cannabis Business at the location, or providing proof that the applicant owns the property;
- M. Detailed operating procedures, which shall include the following:
 - 1. Proposed hours of operation;
 - 2. How the business will comply with applicable state regulations;
 - 3. Product safety and quality assurances;
 - 4. Record keeping procedures;
 - 5. Product recall procedures;
 - 6. A solid waste disposal plan, with certification that waste transport entities and disposal facilities have agreed to haul and receive solid waste produced by the Cannabis Business;

7. Product supply chain information (cultivation, testing, transportation, manufacturing, packaging and labeling, etc.);
 8. An odor prevention plan, illustrating how the Cannabis Business will be consistent with §17.30.080(J) and/or §18.30.080(J). The odor prevention plan may include an odor absorbing ventilation and exhaust system or other measures to ensure the use does not produce odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public; and
 9. Other information as required by the Chief of Police as necessary to ensure the project's compliance with local, state and federal regulations;
- N. Authorization for the City, its agents and employees to seek verification of the information contained within the application; and
- O. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

9.30.060 TIME LIMIT FOR FILING APPLICATION FOR PERMIT.

If the applicant has completed the application improperly, or if the application is incomplete, the Chief of Police shall, within 10 days of receipt for the original application, notify the applicant of the fact and, on request of the applicant, grant the applicant an extension of time of 10 days or more to submit a complete application.

9.30.070 TERM OF PERMITS AND RENEWALS.

Cannabis Business Permits issued under this chapter shall expire one year following their issuance. Cannabis Business Permits may be renewed by the Chief of Police for additional one-year periods upon application by the permittee, unless the permit is suspended or revoked subject to §9.30.190. Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by the nonrefundable fee referenced in §9.30.080. When made less than 45 days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits. The Chief of Police may deny an application for renewal based on any of the grounds referenced in §9.30.100 and 9.30.190. An applicant aggrieved by the Chief of Police's decision to deny a renewal of a cannabis business permit may appeal pursuant to § 9.30.110.

9.30.080 FEES.

Every application for a Cannabis Business Permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution adopted by the City Council from time to time. This application or renewal fee is in addition to fingerprinting, photographing, and background check costs and shall be in addition to any other permit fee imposed by this code or other governmental agencies. Fingerprinting, photographing, and background check fees will be as established by resolution adopted by the City Council from time to time.

9.30.090 INVESTIGATION AND ACTION ON APPLICATION.

After the making and filing of the application for the Cannabis Business Permit and the payment of the fees, the Chief of Police shall conduct a background check of the applicant and conduct an investigation of the application. After the background checks and investigation are complete, the Chief of Police shall either formally accept or reject the application in accordance with the provisions of this chapter.

9.30.100 GROUNDS FOR REJECTION OF APPLICATION.

The grounds for rejection of a Cannabis Business Permit application shall be one or more of the following:

- A. The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule, or regulation;
- B. The applicant has violated any local or state law, statute, rule, or regulation respecting a Cannabis Business;
- C. The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit;
- D. The applicant, his or her agent, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony, or of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution, or similar activities related to controlled substances, with the exception of cannabis related offenses for which the conviction occurred prior to passage of Proposition 215. A conviction within the meaning of this section means a guilty plea or verdict or a conviction following a plea of nolo contendere;
- E. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices;
- F. The applicant is under 21 years of age;
- G. The Cannabis Business does not comply with Title 18 (Land Use and Development Code); and/or
- H. The required application or renewal fees have not been paid.

9.30.110 APPEAL FROM CHIEF OF POLICE DECISION TO REJECT APPLICATION.

The Chief of Police shall cause a written notice of his or her decision to reject a Cannabis Business Permit application to be mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested, to the address provided by the applicant for sending of notices. An applicant aggrieved by the Chief of Police's decision to reject an application may appeal the decision in accordance with the procedures described in Chapter 1.08. If an appeal is not taken within such time, the Chief of Police's decision shall be final.

9.30.120 PROCESSING OF CANNABIS BUSINESS PERMIT.

If an application is not rejected by the Chief of Police, it shall be forwarded to the Community Development Department for processing using the same permit process and requirements for required for the proposed Cannabis Business as defined in Title 17 (Coastal Land Use and Development Code) and/or Title 18 (Land Use and Development Code), as applicable.

9.30.130 OPERATING REQUIREMENTS.

A Cannabis Business shall meet the following operating requirements for the duration of the use:

- A. The design, location, size and operating characteristics of the Cannabis Business shall comply with the findings and conditions of any applicable discretionary permit obtained for its operation.
- B. A Cannabis Business use shall maintain a current register of the names of all employees currently employed by the use.
- C. The building entrance to a Cannabis Business shall be clearly and legibly posted with a notice indicating that persons under the age of 21 are precluded from entering the premises unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.
- D. No Cannabis Business shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition,

alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the cannabis Business use.

- E. A Cannabis Business shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of employees and visitors from criminal activity, including theft and unauthorized entry.
- F. A Cannabis Business shall provide the Chief of Police and Fire Chief with the name, phone number, and facsimile number of an on-site community relations staff person to whom one can provide notice if there is an emergency or there are operating problems associated with the Cannabis Business. The Cannabis Business management shall make every good faith effort to encourage residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the police or planning departments.

9.33.140 MINORS.

- A. It shall be unlawful for any permittee, operator, or other person in charge of any Cannabis Business to employ any person who is not at least 21 years of age.
- B. Persons under the age of 21 shall not be allowed on the premises of a Cannabis Business unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.

9.33.150 DISPLAY OF PERMIT.

Every Cannabis Business shall display at all times during business hours the permit issued pursuant to the provisions of this chapter for cannabis business in a conspicuous place so that the same may be readily seen by all persons entering the cannabis business use.

9.33.160 REGISTRATION OF NEW EMPLOYEES.

- A. As a further condition of approval of every Cannabis Business Permit issued pursuant to this chapter, every owner or operator shall register every employee with the Police Department within five business days of the commencement of the employee's period of employment at the Cannabis Business, in order to provide necessary information to conduct background checks.
- B. Each employee shall be required to provide two recent color passport quality photographs and, at the discretion of the Chief of Police, shall allow himself or herself to be fingerprinted by the Police Department for purposes of identification.
- C. Failure to register each new employee within five days of the commencement of employment or to maintain a current register of the names of all employees shall be deemed a violation of the conditions of the permit and may be considered grounds for suspension or revocation of the permit.

9.33.170 TRANSFER OF PERMITS.

- A. A permittee shall not operate a Cannabis Business under the authority of a Cannabis Business Permit at any place other than the address of the Cannabis Business stated in the application for the permit.
- B. A permittee shall not transfer ownership or control of a Cannabis Business or transfer a Cannabis Business Permit to another person unless and until the transferee obtains an amendment to the permit from the Chief of Police stating that the transferee is now the permittee. The amendment may be obtained only if the transferee files an application with the Chief of Police in accordance with § 9.33.050, accompanies the application with a transfer fee in an amount set by resolution of the City Council, and the Chief of Police determines in accordance with § 9.33.080 that the transferee would be entitled to the issuance of an original permit.

- C. No permit may be transferred when the Chief of Police has notified the permittee that the permit has been or may be suspended or revoked.
- D. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.

9.33.180 SUSPENSION AND REVOCATION – NOTICE.

- A. Any permit issued under the terms of this chapter may be suspended or revoked by the Chief of Police when it appears to him or her that the permittee has committed any one or more of the acts or omissions constituting the grounds for suspension or revocation under this chapter.
- B. No permit shall be revoked or suspended by virtue of this section until a hearing has been held by the Chief of Police. Written notice of the time and place of the hearing shall be served upon the person to whom the permit was granted at least five days prior to the date set for the hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery to the permittee or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, addressed to the permittee at the address provided by the permittee for sending of notices.

9.33.190 SUSPENSION AND REVOCATION – GROUNDS.

It shall be a ground for suspension or revocation of a permit if any permittee or person, his or her agent, or employee:

- A. Does any act which violates any of the grounds set forth in § 9.30.100, which sets forth the grounds for rejection of an application for a permit for the Cannabis Business;
- B. Violates any other provision of this chapter or any local or state law, statute, rule, or regulation relating to his or her permitted activity;
- C. Conducts the permitted business in a manner contrary to the peace, health, or safety of the public;
- D. Fails to take reasonable measures to control the establishment's patrons' conduct resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the business operation of another business;
- E. Violates any provision of Title 15; or
- F. Violates or fails to comply with the terms and conditions of any required discretionary permit.

9.33.200 SUSPENSION AND REVOCATION – APPEALS.

Any permittee aggrieved by the decision of the Chief of Police in suspending or revoking a permit may, within 10 calendar days, appeal the decision in accordance with the procedures described in Chapter 1.08. If a decision of the Chief of Police to suspend or revoke a permit is not appealed within 10 calendar days, the decision of the Chief of Police shall be final.

9.33.210 SUSPENSION OR REVOCATION WITHOUT HEARING.

If any person holding a permit or acting under the authority of the permit under this chapter is convicted of a misdemeanor in any court for the violation of any law which relates to his or her permit, the Chief of Police shall revoke the permit forthwith without any further action thereof, other than giving notice of revocation to the permittee. If a permit is summarily revoked pursuant to the provisions of this section, a permittee may, within 10 calendar days, appeal the revocation in accordance with the procedures described in Chapter 1.08. During the

pendency of the appeal, the permit shall be deemed suspended. If the appeal is not taken within 10 days, the decision of the Chief of Police shall be final.

9.33.220 SEPARATE OFFENSE FOR EACH DAY.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

9.33.230 PUBLIC NUISANCE.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to Chapter 6.12.

9.33.240 CRIMINAL PENALTIES.

Any person who violates, causes, or permits another person to violate any provision of this chapter commits a misdemeanor.

9.33.250 CIVIL INJUNCTION.

The violation of any provision of this chapter shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.

9.33.260 ADMINISTRATIVE REMEDIES.

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this chapter may be subject to administrative remedies, as set forth by City ordinance.

9.33.270 SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of this chapter. The City Council of the City hereby declares that it would have passed the ordinance codified in this chapter and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that 1 or more sections, subsections, sentences, clauses, or phrases may be held invalid or unconstitutional.

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 _____ at a regular meeting of the City Council of the City of Fort Bragg held on October 15, 2019, and adopted at a regular meeting of the City of Fort Bragg held on October 28, 2019, by the following vote:

