

**ORDINANCE NO. 2023-764**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORTUNA  
AMENDING CHAPTERS 17.03, 17.06, AND 17.08 OF THE FORTUNA MUNICIPAL  
CODE TO COMPLY WITH THE MULTIFAMILY DESIGN STANDARDS AND TO  
ALLOW AGRICULTURAL EMPLOYEE HOUSING CONSISTENT WITH STATE  
LAW AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA**

**WHEREAS**, the City of Fortuna, California (“City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

**WHEREAS**, in 2019 Fortuna was awarded an SB-2 grant from the State of California to fund City planning efforts to streamline housing approvals and accelerate housing production; and

**WHEREAS**, the City elected to use part of this SB-2 grant to prepare new Multifamily Design Standards for mixed-use residential and multifamily development; and

**WHEREAS**, on September 5, 2023, the City Council approved Resolution 2023-26 adopting the Multifamily Design Standards; and

**WHEREAS**, the Multifamily Design Standards allow for ministerial approval without Design Review of certain multifamily projects when consistent with the Multifamily Design Standards; and

**WHEREAS**, Chapter 17.03 of the Fortuna Municipal Code currently requires a Conditional Use Permit and Design Review for multifamily development; and

**WHEREAS**, amendments to the Fortuna Municipal Code are needed to resolve the conflict between Chapter 17.03 and the adopted Multifamily Design Standards; and

**WHEREAS**, the Community Development Department prepared amendments to Chapter 17.03 and Chapter 17.06 to allow projects consistent with the Multifamily Design Standards by-right without Design Review or a Conditional Use Permit, require compliance with the adopted Multifamily Design Standards, and specify a process to allow deviations from the standards; and

**WHEREAS**, the SB-2 grant scope of work also calls for the City to amend the Municipal Code to allow agricultural employee housing in agricultural zones consistent with State law; and

**WHEREAS**, the Fortuna General Plan Housing Element Objective H-24 calls for the City to revise the Zoning Code to comply with Health and Safety Code Sections 17021.5 and 17021.6; and

**WHEREAS**, the California Employee Housing Act (California Health and Safety Code 17000 – 17062.5) prohibits requirements to obtain a Conditional Use Permit or other discretionary approval not required of other agricultural activity in the same zone; and

**WHEREAS**, Municipal Code Section 17.03.040(D) currently requires a Use Permit for all labor camps and labor supply camps in the Agriculture Exclusive zoning district, in conflict with the

Employee Housing Act; and

**WHEREAS**, to resolve this conflict the Community Development Department prepared amendments to Section 17.03.040 to identify agricultural employee housing as a principally permitted use if the housing is regulated by the California Department of Housing and Community Development under the Employee Housing Act; and

**WHEREAS**, on September 26, 2023, the Planning Commission of the City of Fortuna reviewed and considered the above-referenced amendments to the Zoning Code at a notice public hearing, held in accordance with law; and

**WHEREAS**, by way of Resolution P-2023-3107, the Planning Commission has recommended that the City Council adopt, by ordinance, the proposed regulations included therewith and set forth herein; and

**WHEREAS**, the Ordinance is consistent with the General Plan programs and policies described in Section 3 below; and

**WHEREAS**, adoption of this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment; and

**WHEREAS**, the City Council has considered the staff report, supporting documents, public testimony, Public Commission Resolution P-2023-3107, and all appropriate information that has been submitted with this Ordinance; and

**WHEREAS**, on October 19 2023, a notice was published in the Times Standard and notices were posted in conspicuous locations including City Hall and the City website, specifying the availability of the Ordinance, and the date, time, and location of the public hearing for this Ordinance; and

**WHEREAS**, all legal prerequisites to the adoption of the Ordinance have occurred.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FORTUNA DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Recitals.** The above recitals are each incorporated by reference and adopted as findings by the City Council.

**SECTION 2. CEQA.** Adoption of this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3), the “General Rule”, which states that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the project would have a significant effect on the environment. The City Council hereby directs staff to prepare, execute, and file with the Humboldt County Clerk a notice of exemption within five (5) working days of the adoption of this Ordinance.

**SECTION 3. General Plan.** Based on the entire record before the City Council, and all written

and oral evidence presented, the City Council hereby finds that this Ordinance's amendments to the Fortuna Municipal Code are consistent with the City's adopted General Plan for the reasons set forth below:

**H-1.1:** Continue to encourage the development and provision of a variety of housing choices, including residential types, tenancies, sizes, locations, and prices, for all economic groups.

- The Multifamily Design Standards encourage and promote diverse housing opportunities by providing a pathway for streamlined, by-right approval for multifamily and mixed-use residential projects that comply with established standards.

**H-24 (Employee Housing):** To comply with Health and Safety Code Sections 17021.5 and 17021.6 the City will review and revise the zoning code. For the purpose of all local ordinances, employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use. No conditional use permit, zoning variance, or other zoning clearance shall be required of this employee housing that is not required of any other agricultural activity in the same zone. The permitted occupancy in employee housing in an agricultural zone shall include agricultural employees who do not work on the property where the employee housing is located.

- The Ordinance establishes a basis for broader housing opportunities for agricultural employees and implements General Plan Policy H-24 by principally permitting agricultural employee housing in the AE zone consistent with State law (California Health and Safety Code 17000 – 17062.5) and the established criteria.

**LU-1.6 (Infill Development):** The City shall encourage infill development on vacant sites and reuse of underutilized parcels to minimize outward growth and reduce the cost of providing public services and facilities.

- The Multifamily Design Standards encourage infill housing consistent with existing residential areas and supports a diverse range of housing types. Many existing multifamily sites in the city are infill sites that have access to nearby public services and facilities.

**SECTION 4. Zoning Regulations Amendment.** The below referenced Sections of Chapter 17.03 – Regulations That Apply in Principal Zoning Districts — of the Fortuna Zoning Regulations (Title 17 of the Municipal Code) are hereby amended as set forth in **Exhibit “A”**, attached hereto and incorporated herein by reference. Without modifying the substance, following approval of this Ordinance, the City Clerk shall cause the Zoning Regulations amendments to be consistent in form and style with the Zoning Regulations. The following Sub-Sections of the following Sections of Chapter 17.03 are amended by this Ordinance:

- 17.03.012(B) and (D) Multifamily residential zoning district (R-M)
- 17.03.020(B) and (D) Neighborhood commercial zoning district (N-C)
- 17.03.021(B) and (D) Retail commercial zoning district (R-C)
- 17.03.040(B), (D), and (H) Agriculture exclusive zoning district (A-E)

**SECTION 5. Zoning Regulations Amendment.** Section 17.06.140 is hereby added to Chapter 17.06 – Regulations That Apply to Specific Uses — of the Fortuna Zoning Regulations (Title 17

of the Municipal Code) as set forth in **Exhibit “B”**, attached hereto and incorporated herein by reference. Without modifying the substance, following approval of this Ordinance, the City Clerk shall cause the Zoning Regulations amendments to be consistent in form and style with the Zoning Regulations.

**SECTION 6. Zoning Regulations Amendment.** Section 17.08.056 is hereby added to Chapter 17.08 – Definitions and Illustrations — of the Fortuna Zoning Regulations (Title 17 of the Municipal Code) as set forth in **Exhibit “C”**, attached hereto and incorporated herein by reference. Without modifying the substance, following approval of this Ordinance, the City Clerk shall cause the Zoning Regulations amendments to be consistent in form and style with the Zoning Regulations.

**SECTION 7. Effective Date.** The effective date of this ordinance is thirty (30) days after its adoption by the City Council.

**SECTION 8. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

**INTRODUCED and FIRST READING CONDUCTED** at a regular meeting of the City Council of the City of Fortuna, California, on this 6th day of November, 2023 by the following vote:

AYES: Council Member Conley, Losey, Mobley, Mayor Pro Tem Johnson

NAYS: None

ABSENT: Mayor Trent

ABSTAIN: None

\_\_\_\_\_  
Mike Johnson, Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
Siana L. Emmons, City Clerk

**SECOND READING CONDUCTED, PASSED, and ADOPTED** at a regular meeting of the City Council of the City of Fortuna, California, on this 4th day of December, 2023 by the following vote:

AYES: Council Member Conley, Losey, Mobley, Mayor Pro Tem Johnson, Mayor Trent

NAYS: None

ABSENT: None

ABSTAIN: None

\_\_\_\_\_  
Tami Trent, Mayor

ATTEST:

\_\_\_\_\_  
Siana L. Emmons, City Clerk

## Exhibit “A”

Notes:

1. Proposed amendments to the subject Sections of Chapter 17.03 are shown in underlined text for additions and ~~strikethrough~~ text for deletions.
2. All sub-sections not included in the below referenced Sections shall continue in full force, unamended by this Ordinance.

### **Chapter 17.03**

#### **REGULATIONS THAT APPLY IN PRINCIPAL ZONING DISTRICTS**

##### **17.03.012 Multifamily residential zoning district (R-M).**

B. Principal Permitted Use. ~~A total of five m~~Multifamily dwelling units. Projects requesting deviation from the Objective Planning Standards for Mixed-use Residential and Multifamily Development, adopted pursuant to Resolution 2023-26 or as later amended by the City Council (hereinafter the “Multifamily Design Standards”), Multifamily Design Standards, are subject to design review approval, pursuant to the provisions of Chapter 17.07 FMC.

D. Conditional Uses. Subject to securing a use permit, and design review approval with the exception of single-family dwellings pursuant to the provisions of Chapter 17.07 FMC:

- ~~1. Six or more multifamily dwelling units;~~
- ~~2.~~ Rest homes;
- ~~3.~~ Hospital offices;
- ~~4.~~ Community care facilities with seven or more (FMC 17.08.152);
- ~~5.~~ Bed-and-breakfast inns, subject to the provisions of FMC 17.06.010;
- ~~6.~~ Mobile home parks, subject to the provisions of FMC 17.06.123;
- ~~7.~~ Child care facilities with nine or more children, subject to the provisions of FMC 17.06.020;
- ~~8.~~ Single-family dwellings;
- ~~9.~~ Principal permitted uses in the neighborhood commercial (N-C) zoning district: (FMC 17.03.020).

##### **17.03.020 Neighborhood commercial zoning district (N-C).**

B. Principal Permitted Uses.

1. Professional offices;

2. Antique, art, music, and hobby stores;
3. Cleaning and dyeing establishments;
4. Dry goods stores;
5. Food stores;
6. Household appliance, radio, and TV repair establishments (small scale);
7. Restaurants seating less than 100 persons, including service of alcoholic beverages at tables and a bar;
8. Sporting goods stores;
9. Barber and beauty shops;
10. Child care facilities with eight or fewer children, subject to the provisions of FMC 17.06.020 (where a use permit is obtained for the residential use prior to establishment of the child day care facility);
11. Community care facilities for six or fewer (FMC 17.08.152) (where a use permit is obtained for the residential use prior to establishment of the community care facility);
12. Bed-and-breakfast inns.
13. Multifamily dwelling units having the density, open space, and setback requirements of the R-M zone, each in a manner consistent with the Multifamily Design Standards.

D. Conditional Uses. Subject to securing a use permit pursuant to the provisions of Chapter 17.07 FMC:

1. Single-family dwellings:

~~1. Residential uses having the density, open space, and setback requirements of the RM zone, subject to design review under Chapter 17.07 FMC, with the exception of single-family dwellings;~~

2. Mobile home parks, subject to the provisions of FMC 17.06.123;
3. Child care facilities with nine or more children, subject to the provisions of FMC 17.06.020;
4. Public and quasi-public buildings and uses, not to include service centers, storage or repair yards, warehouses, or similar uses;
5. Community care facilities for seven or more (FMC 17.08.152);
6. Service stations, subject to the provisions of FMC 17.06.184;
7. Social halls and nonprofit clubs, subject to the requirements of FMC 17.06.185;
8. Plant nurseries;
9. Shopping centers, which are subject to all three of the following:

- a. Minimum size of one acre; and
  - b. Placement of the design control combining of -D zone on the entire project site; and
  - c. Approval of the final site plan by the city council, after review by the planning commission;
10. Special schools;
  11. Mobile food vending.

### **17.03.021 Retail commercial zoning district (R-C).**

#### **B. Principal Permitted Uses.**

1. Art, music, and hobby stores;
2. Business administration offices;
3. Business service establishments;
4. Child care facilities with eight or fewer children, subject to the provisions of FMC 17.06.020 (where a use permit is obtained for the residential use prior to establishment of the child day care facility);
5. Community care facilities for six or fewer (FMC 17.08.152) (where a use permit is obtained for the residential use prior to establishment of the community care facility);
6. Department stores;
7. Dry goods stores;
8. Financial institutions;
9. Furniture and appliance stores;
10. Hotels and nonprofit clubs;
11. Miscellaneous retail stores;
12. Motion picture and live theaters, concert halls, and assembly halls;
13. Professional offices;
14. Recreation and sports stores;
15. Restaurants including bars, dancing and entertainment;
16. Special schools;
17. Bed-and-breakfast inns, subject to the provisions of FMC 17.06.010.
18. Multifamily dwelling units having the density, open space, and setback requirements of the R-M zone, each in a manner consistent with the Multifamily Design Standards.

D. Conditional Uses. Subject to securing a use permit pursuant to the provisions of Chapter 17.07 FMC:

1. Automobile rental agencies, commercial parking lots and parking structures, and service stations subject to the provisions of FMC 17.06.184;
2. Automotive services, general;
3. Child care facilities with nine or more children, subject to the provisions of FMC 17.06.020;
4. Commercial recreation facilities subject to the following:
  - a. Ingress and egress shall be at least 20 feet from any property line;
  - b. Landscape and screening provisions of FMC 17.05.110 shall be followed;
5. Community care facilities for seven or more (FMC 17.08.152);
6. Contractors' shops and yards;
7. Food stores;
8. Major retail development, subject to the provisions of FMC 17.06.120;
9. Mortuaries, crematories, and columbaria;
10. Plant nurseries;
11. Shopping centers, which are subject to all three of the following:
  - a. Minimum size of two acres, including adjacent and associated lots developed, managed, or owned by the same party, which may or may not be enjoying joint reciprocal parking and/or access; and
  - b. Placement of the -D design control combining zone on the entire project site; and
  - c. Approval of the final site plan by the city council after review by the planning commission;
12. Warehousing and wholesaling;
13. ~~Residential uses that conform with the density, open space, and setback requirements of the RM zone, subject to design review under Chapter 17.07 FMC, with the exception of~~ Single-family dwellings;

**17.03.040 Agriculture exclusive zoning district (A-E).**

B. Principal Permitted Uses.

1. One single-family dwelling per lot;
2. Farm dwellings, nurseries, greenhouses, and roadside stands;

3. Child care facilities with eight or fewer children, subject to the provisions of FMC 17.06.020;
4. Community care facilities for six or fewer (FMC 17.08.152);
5. All general agricultural uses, except those specified in FMC 17.34.030;
6. Agricultural employee housing with no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household, or that is approved pursuant to Section 17021.8 of the Health and Safety Code.

D. Conditional Uses. Subject to securing a use permit pursuant to the provisions of Chapter 17.07 FMC:

1. Hog farms, turkey farms, frog farms, and fur farms;
2. Animal feed yards and sales yards;
3. Agricultural and timber products processing plants;
4. Rental and sales of irrigation equipment and storage incidental thereto;
5. Animal hospitals;
6. Child care facilities with nine or more children, subject to the provisions of FMC 17.06.020;
7. Community care facilities for seven or more (FMC 17.08.152);
8. Labor camps and labor supply camps, excluding principally permitted agricultural employee housing.

**H. Agricultural Employee Housing.** Agricultural employee housing shall comply with the following:

**1. Location.** Agricultural employee housing may, but is not required to, be developed or provided by the employer, or located on the same lot where the qualifying agricultural work is being performed.

**2. Evidence of Valid Permit.** Within 30 days after obtaining the appropriate permit from the California Department of Housing and Community Development (HCD) to operate the agricultural employee housing, and thereafter on an annual basis, the applicant shall submit evidence that the HCD permit for the agricultural employee housing is current and valid.

**3. Deed Restriction.**

**a. Within 30 days after receiving approval for permanent or seasonal employee housing from the Community Development Department, and before issuance of the final Zoning Clearance Certificate, the applicant shall record with the County Recorder, a deed restriction in a form approved by the City that runs with the land on which the agricultural employee housing is located declaring that:**

i. The agricultural employee housing will continuously be maintained in compliance with this section and all other applicable sections of the Zoning Code; and

ii. The applicant will obtain and maintain, for as long as the agricultural employee housing is operated, the appropriate permit(s) from HCD pursuant to the Employee Housing Act and the regulations promulgated thereunder.

b. The deed restriction shall not be amended, released, terminated, or removed from the property without the prior written consent of the City. In the event the agricultural employee housing use is terminated and/or structures are removed in accordance with the Zoning Code and other applicable law as confirmed in writing by the Community Development Director, the deed restriction that accompanies the development shall be released and removed from the property.

**4. Signed Affidavit for Temporary Employee Housing.** Within 30 days after receiving approval for temporary employee housing from the Community Development Department, the applicant shall submit a signed affidavit, in a form approved by the City, affirming that:

a. The agricultural employee housing will only be used as temporary employee housing; and

b. The applicant will obtain and maintain, for as long as the temporary employee housing is operated, the appropriate permit(s) from HCD pursuant to the Employee Housing Act and the regulations promulgated thereunder.

## Exhibit “B”

### Chapter 17.06

#### REGULATIONS THAT APPLY TO SPECIFIC USES

##### **17.06.140 Multifamily Dwellings.**

**A. Compliance with Objective Standards.** Multifamily dwellings and mixed-use residential development are subject to the adopted Objective Planning Standards for Mixed-use Residential and Multifamily Development, adopted pursuant to Resolution 2023-26 or as later amended by the City Council (hereinafter the “Multifamily Design Standards”).

**B. By-Right Approval.** A proposed project determined to be consistent with the Multifamily Design Standards and all other applicable City standards and requirements shall be approved without Design Review or a Use Permit.

**C. Deviation from Standards.** An applicant may request a deviation from the Multifamily Design Standards through the Design Review process in Chapter 17.07.100 FMC. The Planning Commission may approve the deviation upon finding that the project incorporates an alternative method to achieve the intent statement that proceeds the standard.

**Exhibit “C”**

**Chapter 17.08**

**DEFINITIONS AND ILLUSTRATIONS**

**17.08.056 Agricultural employee housing.**

“Agricultural employee housing” means housing occupied by agricultural employees regulated by the California Department of Housing and Community Development under the Employee Housing Act (California Health and Safety Code 17000 – 17062.5).