

ORDINANCE 2025-774

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORTUNA, CALIFORNIA AMENDING CHAPTER 5.40 – FORTUNA BUSINESS IMPROVEMENT DISTRICT – OF THE FORTUNA MUNICIPAL CODE 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, by way of Ordinance 90-550 adopted on May 21, 1990, the City Council established the Fortuna Business Improvement District (“FBID”) pursuant to the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code, §§ 36500 *et seq.*); and

WHEREAS, since its inception in 1990, FBID has existed to promote the economic revitalization and physical maintenance of the business districts in order to create jobs, promote tourism, support existing businesses, and attract new businesses; and

WHEREAS, FBID’s activities are funded through a limited assessment upon businesses located and operating within the district and, from time-to-time, from general fund revenues as determined annually by the City Council; and

WHEREAS, FBID continues to confer a special benefit on those businesses subject to the annual assessment; and

WHEREAS, on March 3, 2025, the Council received and approved the annual report of the FBID advisory board without modification; and

WHEREAS, pursuant to Section 36534 of the California Streets and Highways Code, the City Council adopted Resolution No. 2025-07 declaring its intention to levy the annual assessment for the 2025-2026 fiscal year and setting the time and place for a public hearing on the proposed assessment; and

WHEREAS, by way of this Ordinance, the City Council desires to make changes to Chapter 5.40 of the Fortuna Business Improvement District as set forth herein; and

WHEREAS, the City Council has considered the staff report, supporting documents, public testimony, and all appropriate information that has been submitted with 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. The City Council finds, pursuant to the California Environment Quality Act (CEQA), Guidelines section 15378, that this Ordinance is not a Project as defined by CEQA. Furthermore, the Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) as it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Therefore, adoption of this Ordinance is statutorily exempt from CEQA.

SECTION 3. Fortuna Municipal Code Amendment. Chapter 5.40 – Fortuna Business Improvement District – of the Fortuna Municipal Code is hereby amended as set forth in *Exhibit A* attached hereto and incorporated herein by this reference.

SECTION 4. Effective Date. This Ordinance shall become effective on the 31st day after its adoption by the City Council. The Clerk shall cause this Ordinance to be published in the manner required by Government Code section 36933.

SECTION 5. 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 7th day of April 2025, by the following vote:

AYES: Council Member Diaz, Mayor Pro Tem Trent, Mayor Johnson

NAYS: None

ABSENT: Council Member Conley

ABSTAIN: None

Mike Johnson, Mayor

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 5th day of May, 2025 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Mike Johnson, Mayor

ATTEST:

Siana L. Emmons, City Clerk

Exhibit A

Note: All revisions to Chapter 5.40 made by this Ordinance are shown below as strikethrough text for deletions and bold-underlined text for additions.

Sections:

- 5.40.010 Establishment of district.
- 5.40.020 Definitions.
- 5.40.030 Benefit assessment.
- 5.40.040 Residential exclusion.
- 5.40.050 Advisory committee.
- 5.40.060 Allocation of funds.
- 5.40.070 Purposes of assessments.
- 5.40.080 Collection of benefit assessment.

5.40.010 Establishment of district.

A parking and business improvement district to be known as the “Fortuna Business Improvement District” (the “district”) is hereby established pursuant to the Parking and Business Improvement Area Law of 1989, Streets and Highway Code Section 36500 et seq. The boundaries of the district ~~and of the three benefit core areas within the district~~ shall be as set forth on Exhibit A attached to the ordinance codified in this chapter and on file in the city clerk’s office; **provided, however, that effective July 1, 2025, the three benefit core areas previously established shall be dissolved as special benefit zones within the District and, instead, such areas shall be considered part of the District, generally.**

5.40.020 Definitions.

For the purpose of calculating the amount of assessment owed, the following definitions shall apply:

“Fiscal year” means July 1st to June 30th of each year.

~~“Gross receipts” includes the total amount of the sale price of all sales and the total amount charged or received for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise. Included in gross receipts shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from gross receipts shall be cash discounts allowed and taken on sales; credit allowed on property accepted as part of~~

~~the purchase price and which property may later be sold; any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser; such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit; amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected; that portion of the receipts of a general contractor which represent payments to subcontractors; provided, that such subcontractors are licensed under this chapter, and provided the general contractor furnished the collector with the names and addresses of the subcontractors and the amounts paid each subcontractor.~~

“Hospitality” businesses include all bars, restaurants, hotels, motels and RV parks.

“Professions” and “service” businesses include general office, attorney, architects, physicians and others in a medical/health service field, news and advertising media, printers, photographers, real estate brokers, builders, service stations, repairing and servicing businesses, renting and leasing businesses, laboratories (including dental and optical), hearing aid services, utilities, artists and designers, vending machine businesses, and other business not included in the “retail” category, as defined in this section.

“Retail businesses” include all businesses not covered by other definitions set forth in this section at least 50 percent of whose gross income is derived from “retail sales” as that is defined in the California Sales and Use Tax Law. The fact that a substantial part of its business consists of other than retail sales does not exclude the business from classification so long as such other business component does not account for more than 50 percent of such business gross income.

Wholesale and Manufacturing. “Wholesale” businesses are those that sell (something) in quantity usually, for resale. “Manufacturing” businesses are those that produce something from raw materials by hand or machinery.

5.40.030 Benefit assessment.

All businesses, trades and professions located within the boundaries shown on Exhibit A attached to the ordinance codified in this chapter and found on file in the office of the city clerk, shall, commencing July 1, 1990, pay a benefit assessment in addition to the city business license fee, in the amounts ~~identified~~ **authorized by the City Council in accordance with the Parking and Business Improvement Area Law of 1989 (California Streets and Highways Code, §§ 36500 et seq.)**, in Exhibit B as amended on ~~March 18, 2002, and attached to the ordinance codified in this chapter and found on file in the office of the city clerk~~

The benefit assessment shall be payable annually during each fiscal year, as provided in FMC 5.40.080.

5.40.040 Residential exclusion.

No one shall be required to pay an assessment based on a residential use within the district.

5.40.050 Advisory committee.

- A. The authorized number of members of the advisory committee of the district shall be ~~seven~~ **five** unless modified by an amendment of this chapter.
- B. The city council shall appoint the advisory committee and prioritize appointments such that the advisory committee is comprised of the following appointments:

- 1. Four representatives from the retail, professional and service, manufacturing/wholesale, and hospitality industries within the district;**
- 2. City council liaison, one representative;**

- ~~1. Downtown core area, one representative;~~
- ~~2. Redwood Village Shopping Center core area, one representative;~~
- ~~3. Strongs Creek Plaza core area, one representative;~~
- ~~4. City council liaison, one representative;~~
- ~~5. Citywide, one representative;~~
- ~~6. Fortuna chamber of commerce, one representative;~~
- ~~7. One person nominated by the six representatives identified above.~~

~~B. The city council, in making appointments to the advisory committee, shall endeavor to make appointments so that the following categories of businesses are represented on the advisory committee:~~

- ~~1. Retail, three representatives;~~
- ~~2. Professional and service, two representatives;~~

~~3. Manufacturing/wholesale, one representative; and~~

~~4. Hospitality, one representative.~~

- C. Each member of the advisory committee shall serve a two-year term and may be eligible for reappointment. The city council may stagger terms of the advisory committee members by resolution.
- D. The advisory committee shall make recommendations and report to the city council on the general expenditure of revenues derived from the levy of assessments pursuant to this chapter, on the classification of businesses, as applicable, and on the method and basis of levying the assessments, among other responsibilities as may be directed by the city council or as required by law.

5.40.060 Allocation of funds.

~~A total of 62 percent of the funds raised within each of the three core areas identified in Exhibit A attached to the ordinance codified in this chapter and found on file in the office of the city clerk shall remain in such area. These funds shall be used to promote such area. The advisory committee shall appoint a subcommittee of no less than three persons from each individual core area to determine how the funds are spent within the core area and to promote the purposes of the district within the core area. The advisory committee shall act as the subcommittee until a subcommittee is appointed or in the event of a vacancy causing the number of subcommittee members to be less than three.~~

~~The funds raised within the citywide area and the remaining 38 percent of the funds raised within each of the three core areas district shall be used to promote the entire community. The advisory committee shall determine how these funds are spent.~~

5.40.070 Purposes of assessments.

The purposes for which the funds raised by said benefit assessment shall be devoted to the statutory purposes set forth in Section 36500 of the Act, or one or more of said purposes, which are as follows:

- A. Promotion of public events which are to take place on or in public places in the district;
- B. Decoration of any public place in the district;
- C. Furnishing of music in any public place in the district;

- D. The general promotion of business activities in the district;
- E. Marketing to fill available space, recruiting and expansion of commercial enterprise.