

ORDINANCE NO. _____

ORDINANCE AMENDING CHAPTER 5.140 – MENDOCINO COUNTY LODGING BUSINESS IMPROVEMENT DISTRICT OF THE MENDOCINO COUNTY CODE TO REVISE THE DEFINITION OF “OPERATOR” AND CONTRACT REQUIREMENTS

The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

Section 1: Section 5.140.030 of the Mendocino County Code is hereby amended to read as follows:

Sec. 5.140.030 Definitions.

Except where the context otherwise requires, the definitions given in this section govern the construction of this Chapter:

- (a) **ADMINISTRATIVE FEE.** "Administrative fee" means a fee not to exceed three percent (3%), which the County of Mendocino is entitled to retain from the assessments they collect within their respective boundaries to pay for the County's everyday administrative costs of the District.
- (b) **ADVISORY BOARD.** "Advisory board" means the advisory board appointed by the Board of Supervisors of the County of Mendocino.
- (c) **ANNUAL REPORT.** "Annual report" means the annual report as approved by the Board of Supervisors pursuant to the Business and Improvement Area Law of 1989.
- (d) **ANNUAL MARKETING PLAN.** "Annual Marketing Plan" means the BID Advisory Board annual report as approved by the Board of Supervisors as it pertains to the improvements and activities to be provided, the estimate revenue, and the estimated costs of the improvements and activities to be provided.
- (e) **ASSESSMENT.** "Assessment" means the levy imposed by this Chapter for the purpose of providing services, activities and programs promoting hotel tourism in the District and marketing the District.
- (f) **BID.** "BID" means the Mendocino County Lodging Business Improvement District.
- (g) **BOARD.** "Board" means the Board of Supervisors of the County of Mendocino.
- (h) **BOARD OF SUPERVISORS.** "Board of Supervisors" means the Board of Supervisors of the County of Mendocino.
- (i) **BUSINESS AND IMPROVEMENT AREA LAW OF 1989.** "Business and Improvement Area Law of 1989" means the provisions of California Streets and Highways Code sections 36500 to 36551, as amended.

- (j) **CITY or CITIES.** "City" or "cities" shall mean, individually or collectively, the City of Fort Bragg, the City of Point Arena, the City of Ukiah, and the City of Willits.
- (k) **CONTRACTOR.** "Contractor" means the individual or entity designated by the Board of Supervisors to administer the Business Improvement District (BID) including hiring and oversight of the individual or entity charged with implementation of the Annual Marketing Plan that is annually approved by the Board of Supervisors.
- (l) **CORE BUSINESS OR ORGANIZATIONAL INTEREST.** "Core Business or Organizational Interest" means a governing board applicant's primary source of business or employment income or organizational representation.
- (m) **COUNTY.** "County" means the County of Mendocino.
- (n) **COUNTY CLERK.** "County Clerk" means the Clerk of the Board of Supervisors.
- (o) **DISTRICT.** "District" means the Mendocino County Lodging Business Improvement District created by this Chapter and as delineated in Section 5.140.040.
- (p) **ENFORCEMENT FEE.** "Enforcement fee" means the reimbursable fee, in addition to the administrative fee and any other penalties or fines, which the County is entitled to retain from the assessments they collect, equal to its actual costs of audits and actions to collect, minus any costs of audits and enforcement actions collected from operators in default of this Chapter.
- (q) **HOTEL or LODGING BUSINESS.** "Hotel" or "lodging business" means any structure or any portion of any structure which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes and includes any hotel, inn, tourist home or house, private residence, detached bedroom, motel, studio hotel, bachelor hotel, lodging houses, rooming houses, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure or portion thereof.
- (r) **HOTEL REVENUES.** "Hotel revenues" means the gross revenues or gross rent collected from the occupancy of space prior to the levy of any tax or other charges.
- (s) **LARGE LODGING OPERATORS.** "Large Lodging Operators" are those lodging operators who, in the aggregate, most nearly generate the top sixty percent (60%) of the assessment revenue on a fiscal year basis.
- (t) **MCLA.** "MCLA" means the Mendocino County Lodging Association.
- (u) **MEDIUM LODGING OPERATORS.** "Medium Lodging Operators" are those lodging operators ranked immediately below the Large Lodging

Operators who, in the aggregate, most nearly generate the next twenty percent (20%) of the assessment revenue on a fiscal year basis.

- (v) **MENDOCINO COUNTY LODGING ASSOCIATION.** "Mendocino County Lodging Association" means the Mendocino County Lodging Association, Inc., an Internal Revenue Code 501(c)(6) organization.
- (w) **MENDOCINO COUNTY LODGING BUSINESS IMPROVEMENT DISTRICT.** "Mendocino County Lodging Business Improvement District" means the Lodging Business Improvement District of the County of Mendocino created by this Chapter and as delineated in Section 5.140.040.
- (x) **OPERATOR.** "Operator" means the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub lessee, mortgagee in possession, licenses, or any other capacity, including but not limited to use of a managing agent or the proprietor's designee. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this Chapter and shall have the same duties and liabilities as his principal. Compliance with the provisions of this Chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.
- (y) **PENALTY ASSESSMENT.** "Penalty Assessment" means the Penalties provided for in Section 5.140.130 which are imposed in addition to the Assessment and any other penalties or costs of audits and enforcement actions.
- (z) **REGIONAL PROMOTIONAL ORGANIZATION.** "Regional Promotional Organization" means an organization in Mendocino County with regular meetings and an ongoing promotional mission focused on a particular region.
- (aa) **RENT.** "Rent" means the consideration charged, whether or not received, for the occupancy of space for a period of thirty (30) days or less, counting portions of calendar days as full days, in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, and property and services of any kind or nature, without any deduction therefrom whatsoever.
- (ab) **SMALL LODGING OPERATORS.** "Small Lodging Operators" are those lodging operators ranked below the Medium Lodging Operators who, in the aggregate, most nearly generate the bottom twenty percent (20%) of the assessment revenue on a fiscal year basis.
- (ac) **TAX ADMINISTRATOR.** "Tax Administrator" means the Treasurer-Tax Collector of the County of Mendocino.

Section 2: Section 5.140.250 of the Mendocino County Code is hereby amended to read as follows:

Sec. 5.140.250 - Contract.

- A. Prior to the expenditure of any District funds, the Contractor shall enter into a contract with County for the services, activities and programs authorized by this Chapter. Pursuant to said contract, all assessments, including assessment penalties and interest, shall be transferred to the Contractor within thirty (30) days following collection of the assessment by the County.
- B. The scope of services of the contract will itemize the services, activities, and programs to be provided by the Contractor or subcontracted by the Contractor for the District.
- C. ~~This contract shall provide for a fifty percent (50%) County match of the total current fiscal year assessment collected pursuant to Section 5.140.240(B), for the purpose of countywide promotion. The fifty percent (50%) County match shall be estimated based on the prior fiscal year assessment collected and shall be paid out in twelve (12) equal monthly installments. After the fiscal year is closed, an adjustment amount will be determined to make the annual County match amount equal to fifty percent (50%) of the total current fiscal year assessment collected. This adjustment amount will be applied no later than September 30 of the following fiscal year. The County may provide an advance in funds to the District and the contract shall provide for the terms and conditions of the advance.~~ The County may provide additional funds to the Contractor through the contract to support the services, activities and programs provided by the Contractor for the District, at the sole discretion of the Board of Supervisors.
- D. The Contract shall provide that all copyright and other use rights in any and all promotional and marketing materials, including, but not limited to, any and all proposals, plans, specifications, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's subcontractors or third parties at the request of the Contractor which are currently held or controlled by the Contractor, or which may be created during the term of this contract, shall be provided to any subsequent contractor designated by the County and if there is none they shall be assigned to the County and its assignees to assure their continued availability for use in the promotion and marketing of Mendocino County.
- E. The Contract shall provide that all existing and unexpended material and financial assets of any kind derived from the BID assessment and match and transferred to Contractor by Visit Mendocino County, Inc., shall be provided to any subsequent contractor designated by the County and if there is none they shall be assigned to the County and its assignees to assure their continued availability for use in the promotion and marketing of Mendocino County;
- F. The Contract shall require that all of the following conditions shall be incorporated into the bylaws of the Contractor's governing board and shall only be changed with the concurrence of the County and amendment of this section:
 - 1. The governing board shall be subject to the Brown Act and provide for

financial transparency in all promotional and marketing activities, including payroll.

2. The governing board shall be comprised of eleven (11) members of whom five (5) shall be directly elected by lodging operators as provided herein and six (6) shall be appointed by the Board of Supervisors as provided herein;
3. Governing board members:
 - a) Shall be required to submit a resume showing relevant experience, complete a questionnaire demonstrating their interest and commitment in promoting Mendocino County, and agree to actively participate in governing board meetings, committees, trainings and other scheduled board activities;
 - b) Shall be elected or appointed to three (3) year terms based on their core business or organizational interest as defined herein except the At Large appointee shall be appointed based on their knowledge and commitment to promoting Mendocino County;
 - c) Shall be subject to term limits of not more than two (2) terms (except a member who has completed less than one-half ($\frac{1}{2}$) of a full term may serve two (2) additional terms if duly elected or appointed);
 - d) Shall be ineligible to serve for three (3) years after being termed out;
4. Lodging members of the governing board shall be directly elected by lodging operators, who shall be classified as "large," "medium," or "small," based on their gross receipts for the fiscal year preceding the election, and who shall vote the percentage of the assessment paid by them, in a County conducted election, as follows:
 - a) One (1) member elected by and from all large lodging operators;
 - b) One (1) member elected by and from all large coastal lodging operators;
 - c) One (1) member elected by and from all large inland lodging operators;
 - d) One (1) member elected by and from all medium lodging operators;
 - e) One (1) member elected by and from all small lodging operators;
5. Non-elected members of the governing board shall be appointed by the Board of Supervisors from applicants who have applied or been

nominated as follows:

- a) One (1) member nominated by and from a coastal chamber of commerce or coastal regional promotional organization;
 - b) One (1) member nominated by and from an inland chamber of commerce or inland regional promotional organization;
 - c) One (1) member nominated by and from a winery or winegrower organization or who applies from an individual winery or winegrower;
 - d) One (1) member who is nominated by and from an arts organization, by and from an attractions governing board, or who applies from an individual attraction;
 - e) One (1) member who applies from a food or beverage business, including culinary, beer or other spirits;
 - f) One (1) member who applies At Large
6. The terms of governing board members shall be staggered so that no less than three (3) or more than four (4) members shall be elected or appointed in any one (1) year (except to fill a vacant unexpired term) with initial terms elected or appointed as follows, with all subsequent terms to be for three (3) years;
- a) Large lodging elected by all large lodging operators: three (3) years;
 - b) Large lodging elected by all large inland lodging operators: two (2) years;
 - c) Large lodging elected by all large coastal lodging operators: one (1) year;
 - d) Medium lodging elected by all medium lodging operators: two (2) years;
 - e) Small lodging elected by all small lodging operators: three (3) years;
 - f) Coastal chamber of commerce or regional promotional organization: three (3) years;
 - g) Inland chamber of commerce or regional promotional organization: two (2) years;
 - h) Winery or winegrower or winery or winegrower organization: three (3) years;
 - i) Arts or Attractions: two (2) years;

- j) Food and Beverage (including culinary, beer and other spirits):
one (1) year;
- k) At Large: one (1) year;

G. The BOS shall provide for public noticing of all vacancies; shall actively encourage multiple nominations for each open seat; and shall provide for geographical diversity.

Section 3: Severability. If any section, subsection, sentence, clause phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this _____ day of _____, 2023, by the following roll call vote:

AYES:
NOES:
ABSENT:

WHEREUPON, the Chair declared the Ordinance passed and adopted
and **SO ORDERED**.

ATTEST: DARCIE ANTLE
Clerk of the Board

GLENN MCGOURTY, Chair
Mendocino County Board of Supervisors

Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

APPROVED AS TO FORM:
Christian M. Curtis
County Counsel

BY: DARCIE ANTLE
Clerk of the Board

Deputy