

ORDINANCE NO. 2523

AN ORDINANCE OF THE CITY COUNCIL OF CHICO AMENDING THE CHICO MUNICIPAL CODE, TITLE 3, REGARDING THE ESTABLISHMENT OF A DOWNTOWN BUSINESS IMPROVEMENT DISTRICT AND PROVIDING PROCEDURES FOR ASSESSMENTS, OPERATIONS AND MAINTENANCE OF THE DISTRICT

WHEREAS, in 1975 the City Council of Chico (“City”) formed the Downtown Parking and Business Improvement Area (“DPBIA”) pursuant to the Parking and Business Improvement Area Law of 1975 (“1975 Act”); and

WHEREAS, in 1975 the City Council entered into an agreement with the Downtown Chico Business Association (“DCBA”) for the administration; and operation of the DPBIA; and

WHEREAS, the DCBA has requested the City to adjust the DPBIA tax to reflect inflation and cost increases since its inception in 1975; and

WHEREAS, the DCBA has requested authorization to directly collect the DPBIA tax and administer the funds in accordance with a written administration agreement with the City.

WHEREAS, in 1996 the people of the State of California enacted Proposition 218 which largely preempted and replaced the provisions of the 1975 Act; and

WHEREAS, it is appropriate to update the Chico Municipal Code to reflect changes in the State Constitution and legislative enactments.

NOW THEREFORE, the City Council of the City of Chico does ordain as follows:

SECTION 1. Chapter 3.35 of Title 3 of the Chico Municipal Code, regarding the establishment of a Downtown Business Improvement District, is added to read as follows:

“Chapter 3.35 DOWNTOWN BUSINESS IMPROVEMENT DISTRICT

Section:

- 3.35.010 Definitions.**
- 3.35.020 Establishment of area.**
- 3.35.030 Boundaries.**
- 3.35.040 Business Improvement District Assessments.**
- 3.35.050 Setting Assessments.**
- 3.35.060 Report on Assessments.**
- 3.35.070 Contents of Notice of Public Hearing.**
- 3.35.080 Publication and Mailing of Notice of Public Hearing**

- 3.35.090 Conduct of Public Hearing.**
- 3.35.100 Conclusion of Public Hearing.**
- 3.35.110 Determination of Majority Protest.**
- 3.35.120 Approval or Disapproval of Levy of Assessments.**
- 3.35.130 Benefit Zones**
- 3.35.140 Residential exclusion.**
- 3.35.150 New business - Exemption.**
- 3.35.160 Disposition of funds.**
- 3.35.170 Collection of assessment.**
- 3.35.180 Power to contract.**
- 3.35.190 Benefit Zone Procedures.**
- 3.35.200 Disestablishment of area; resolution of intention.**
- 3.35.210 Limitation Period.**

3.35.010 Definitions.

For the purposes of Chapter 3.35, the following definitions shall apply:

A. "Retail" businesses include all businesses not specifically included within other definitions set out in this section and which at least in part sell at retail in the regular course of business. The fact that a substantial part or most of its business consists of other than retail sales does not exclude the business from this classification. To "sell at retail," as used in the definition of this classification means the making of a "retail sale" or a "sale at retail" as those terms are defined in the Sales and Use Tax Law of the state of California.

B. "Bars" shall mean any place of business that maintains and sells or dispenses any type of alcoholic beverage at "on-sale," as that term is defined by the Alcoholic Beverage Control Act of the state of California.

C. "Restaurants" shall mean any establishment where food is prepared for human consumption, either on or off the premises.

D. "Theaters" shall mean any place where a theater business is conducted containing a permanent stage or in which motion pictures are exhibited and other exhibitions are presented where an admission charge is made.

E. "Amusements" shall mean any type of business conducted for amusement purposes for which an admission or other charge is made for the purpose of enjoying such amusement. This shall be deemed to include operators or lessees of amusement-type vending machines of all kinds.

F. "Professional and services" shall be deemed to include, but not necessarily be limited to the following: persons or businesses engaging in a pursuit or activity professionally; news and advertising media; printers; photographers, but not sellers of photo supplies; real estate brokers; builders; service stations; repairing and servicing; renting and leasing; laboratories, including dental and optical; hearing aid services; utilities; artists and designers; and vending machine businesses.

G. "Financial, lending and securities institutions" shall be deemed to include all financial, lending or securities institutions that are not exempt by law from paying a business license tax.

H. "Hotels and motels" shall mean the types of businesses devoted to human lodging on a transient basis, as distinguished from apartment houses, roominghouses and other types of concerns that provide human lodging on a more permanent basis.

I. "Auto dealers" shall mean businesses dealing in the sale of motor vehicles, both new and used, and shall include dealers in trucks, farm implements, and all other types of motorized equipment that is moved by motor power on wheels or tracks; but does not include sale of motor vehicle parts when not accompanied by the sale of motor vehicles by the same business.

J. The "number of employees" referred to in Table I of Section 3.35.060 shall mean all persons engaged in the operation or conduct of any business whether as owner, any member of the owner's family, partner, agent, manager, solicitor, or salesperson, regardless of basis of compensation, and any and all other persons employed or working in such business, including but not limited to students and apprentices working in connection with instruction in any business, for which service the owner, operator, or management receives compensation or a thing of value.

In determining the number of employees, the number of hours worked by all employees, the number of hours worked by all employees during the entire preceding fiscal year shall be added together and the sum thereof divided by 2,000. Any remainder or fraction shall not be considered. However, any amount below the first 2,000 hours shall be considered as 2,000 hours, and, in such event, the business in question shall pay a assessment using one employee as a basis for computing the assessment due.

Any employee who is paid for working away from the business location for more than 50% of the time for which the employee is paid during a fiscal year shall be deemed an exempt employee, and the employee's time shall not be included in the computation above, except that a business in which all employees qualify for the exemption shall pay a assessment using one employee as a basis for computing the assessment due.

(Ord. 1125 §8, Ord. 1189 §1, Ord. 2268)

3.35.020 Establishment of area.

There is hereby established in the city, a downtown business improvement district, pursuant to the charter city authority of the City granted by the California Constitution.

3.35.030 Boundaries.

The description of the boundaries of said area so established by this chapter is as follows:

"DOWNTOWN BUSINESS IMPROVEMENT DISTRICT

"Beginning at intersection of the easterly line of the Esplanade and the centerline of Big Chico Creek; thence northerly along the easterly line of the Esplanade to the southerly line of Memorial Way; thence easterly along the southerly line of Memorial Way to the westerly line of Camellia Way and its prolongation to the northerly prolongation of the north-south interior lot lines between Flume Street and Orient Street; thence southerly along the north-south interior lot lines and their prolongation to the southerly line of an alley, said alley lying between East 9th Street and Humboldt Avenue; thence easterly along the southerly line of said alley, 66.0 feet; thence southerly and parallel to Orient Street to the northerly line of Humboldt Avenue; thence westerly along the northerly line of Humboldt Avenue to the north-south interior lot line between Flume Street and Orient Street; thence southerly along the southerly prolongation of said north-south interior lot line to the centerline of Little Chico Creek; thence westerly along the centerline of Little Chico Creek to its intersection with the southerly prolongation of the easterly line of Normal Avenue; thence northerly along the easterly line of Normal Avenue to the northerly line of West 2nd Street; thence easterly along the northerly line of West 2nd Street, 187.8 feet; thence northerly parallel to Salem Street, 132.0 feet; thence easterly parallel to West 2nd Street, 76.2

feet to the westerly line of Salem Street; thence northerly along the westerly line of Salem Street to the southerly line of West 1st Street; thence easterly along the southerly line of West 1st Street to the westerly line of Broadway; thence northerly along the prolongation of the westerly line of Broadway to the westerly line of Shasta Way; thence northerly along the westerly line of Shasta Way to the centerline of Big Chico Creek; thence easterly along the centerline of Big Chico Creek to the point of the beginning.

“The above described improvement area is subdivided into two (2) zones, Zone A and Zone B, described as follows:

“ZONE A

“Beginning at the intersection of the easterly line of Main Street and the centerline of Big Chico Creek; thence southerly along the easterly line of Main Street to the southerly line of East 1st Street; thence easterly along the southerly line of East 1st Street to the westerly line of Wall Street; thence southerly along the westerly line of Wall Street to the northerly line of East 5th Street; thence westerly along the northerly line of East and West 5th Street to the easterly line of Salem Street; thence northerly along the easterly line of Salem Street to the southerly line of West 1st Street; thence easterly along the southerly line of West 1st Street to the westerly line of Broadway; thence northerly along the prolongation of the westerly line of Broadway to the westerly line of Shasta Way; thence northerly along the westerly line of Shasta Way to the centerline of Big Chico Creek; thence easterly along the centerline of Big Chico Creek to the point of beginning.

“ZONE B

“All the previously described improvement area excluding the above-described Zone A.”
(Ord. 1125 §4)

3.35.040 Business Improvement District Assessments.

A. All businesses, trades, or professions now subject to business license tax under the provisions of Chapter 3.32, situate in either of the zones as described in Section 3.35.030 shall be subject to a Downtown Business Improvement District Assessment (DBID Assessment) in an amount or amounts determined pursuant City Council Resolution adopted pursuant to the provisions of this Chapter 3.35. DBID Assessments shall be imposed on business entities or business owners, and shall not be imposed upon or constitute an encumbrance on real property.

B. The assessments levied on businesses pursuant to this part shall be levied on the basis of the estimated benefit to the businesses within the DBID. The amount of the assessment shall bear a reasonable relationship to the benefit received by each business within the DBID. The city council may classify businesses for purposes of determining the benefit to a business of the improvements and activities provided pursuant to this Chapter.

3.35.050 Setting Assessments.

Upon the establishment of the DBID, the City Council may propose the establishment of new or increased DBID Assessments which shall be established by City Council Resolution after notice and a public hearing.

3.35.060 Report on Assessments.

A. The Downtown Chico Business Association (DCBA), in consultation with and under the direction of the Finance Director, shall cause to be prepared a report for the initial year and each fiscal year for which assessments are to be levied and collected to pay the costs of the

improvements and activities described in the report. The report may propose changes, including, but not limited to, the boundaries of the DBID or any benefit zones within the district, the basis and method of calculating and levying the assessments, and any changes in the classification of businesses, if a classification is used.

B. The report shall be filed with the clerk and shall refer to the DBID by name, specify the fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following:

1. Any proposed changes in the boundaries of the DBID or in any benefit zones within the district.
2. The improvements and activities to be provided for that fiscal year.
3. An estimate of the cost of providing the improvements and the activities for that fiscal year.
4. The method and basis of calculating and levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
5. The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
6. The amount of any contributions to be made from sources other than assessments levied pursuant to this part.

C. The city council may approve the report as filed by the DCBA or may modify any particular contained in the report and approve it as modified. The city council shall not approve a change in the basis and method of levying assessments that would impair an authorized or executed contract to be paid from the revenues derived from the levy of assessments.

3.35.070 Contents of Notice of Public Hearing.

The Notice of Public Hearing shall do all of the following:

A. State that a DBID Assessment is proposed to be established pursuant to this chapter and describe the boundaries of the territory proposed to be included in the area and the boundaries of each separate benefit zone to be established within the area. The boundaries of the area may be described by reference to a map on file in the office of the clerk, showing the proposed area.

B. State the type or types of improvements and activities proposed to be funded by the levy of assessments on businesses in the district.

C. State that, except where funds are otherwise available, an assessment will be levied annually to pay for all improvements and activities within the area.

D. State the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business.

E. State whether new businesses will be exempt from the levy of the assessment, pursuant to Section 3.35.150.

F. Fix a time and place for a public hearing on the establishment of the DBID Assessments, which shall be not sooner than ten (10) days after mailing of the notice.

G. State that at the hearing the testimony of all interested persons for or against the establishment of the assessment, the extent of the area, or the furnishing of specified types of improvements or activities will be heard.

H. State that if written protests are received from the owners of businesses in the proposed area which will pay more than 50 percent of the assessments proposed to be levied and protests

are not withdrawn so as to reduce the protests to less than a majority, no further proceedings to create the establish the proposed assessment, as contained in the Notice of Hearing, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

3.35.080 Publication and Mailing of Notice of Public Hearing

Notice of a public hearing held to establish assessments pursuant to this Chapter 3.35 shall be given by both of the following:

- A. Publishing the Notice of Public Hearing once in a newspaper circulated within the city not less than ten (10) days before the Public Hearing, including the date of the Hearing.
- B. Mailing of the Notice of Public Hearing by first-class mail to each business owner in the area not later than ten (10) days before the Public Hearing, including the date of the Hearing.

3.35.090 Conduct of Public Hearing.

A. The city council shall hold the public hearing at the time and in the place specified in the Notice of Public Hearing. The city council may continue the public hearing from time to time.

B. At the public hearing, the city council shall consider the report of the DCBA and the Finance Director, and hear and consider all protests against the establishment of the area, the extent of the area, or the furnishing of specified types of improvements or activities within the area. A protest may be made orally or in writing by any interested person. Any protest pertaining to the regularity or sufficiency of the proceedings shall be in writing and shall clearly set forth the irregularity or defect to which the objection is made.

C. Every written protest shall be filed with the clerk at or before the time fixed for the public hearing. The city council may waive any irregularity in the form or content of any written protest and at the public hearing may correct minor defects in the proceedings. A written protest may be withdrawn in writing at any time before the conclusion of the public hearing.

D. Each written protest shall contain a description of the business in which the person subscribing the protest is interested sufficient to identify the business and, if a person subscribing is not shown on the official records of the city as the owner of the business, the protest shall contain or be accompanied by written evidence that the person subscribing is the owner of the business. A written protest which does not comply with this section shall not be counted in determining a majority protest.

3.35.100 Conclusion of Public Hearing.

A. At the conclusion of the public hearing to establish the DBID, the city council may adopt, revise, change, reduce, or modify the proposed assessment or the type or types of improvements and activities to be funded with the revenues from the assessments.

B. At the public hearing, the city council may only make changes in, to, or from, the boundaries of the proposed DBID that will exclude territory which will not benefit from the proposed improvements or activities. However, proposed assessments may only be revised by reducing any or all of them.

C. The city council shall not change the boundaries of the area to include any territory that was not included in the Notice of Public Hearing.

3.35.110 Determination of Majority Protest.

A. Only written protests signed and submitted to the City Clerk before the close of the Public Hearing shall be considered in determining a majority protest.

B. If written protests are received from the owners of businesses in the proposed area which will pay 50 percent or more of the assessments proposed to be levied and protests are not withdrawn so as to reduce the protests to less than a majority, no further proceedings to levy the proposed assessment, as contained in the Public Hearing Notice and report, shall be taken for a period of one year from the date of the finding of a majority protest by the city council.

3.35.120 Approval or Disapproval of Levy of Assessments.

If the city council, following the public hearing, determines that a majority protest does not exist, it may proceed, but is not required, to authorize the proposed improvements, services and activities described in the report and levy the assessments described in the report or as allowed to be modified by the City Council. The City Council shall adopt a Resolution approving the improvements, services and activities and levying the assessments. The Resolution shall constitute the levy of the assessment and shall contain all of the following:

A. The time and place where the public hearing was held concerning the approval of the improvements, services and levy of assessments.

B. A determination regarding any protests received at the public hearing.

C. The description of the boundaries of the area and of each separate benefit zone established within the area.

D. A statement that the DBID has been established and the name of the district.

E. The description of the method and basis of levying the assessments, with a breakdown by classification of businesses if a classification is used.

F. A statement that the improvements and activities to be provided in the district will be funded by the levy of the assessments. The revenue from the levy of assessments within the district shall not be used to provide improvements or activities outside the district or for any purpose other than the purposes specified in the report, as modified by the city council at the hearing concerning establishment of the assessments.

G. A finding that the businesses and the property within the DBID will be benefited by the improvements and activities funded by the assessments proposed to be levied.

3.35.130 Benefit Zones

The city council may establish one or more separate benefit zones within the DBID based upon the degree of benefit derived from the improvements or activities to be provided within the benefit zone and may impose a different assessment within each benefit zone.

3.35.140 Residential exclusion.

No person is subject to the assessment imposed herein by reason of conducting a residential use upon any property within either of the zones described in Section 3.35.030.

3.35.150 New Business - Exemption.

Any new business established in the DBID shall be exempt from any assessment under the provisions of this chapter for the license year during which it commenced business. This shall not be deemed to apply to an existing business that has changed ownership or location within the district.

3.35.160 Disposition of funds.

The purposes for which the funds raised by said assessment shall be devoted to the statutory purposes set forth in section 36000 of the Streets and Highways Code of the state of California, or one or more of said purposes, which are as follows:

- A. The acquisition, construction or maintenance of parking facilities for the benefit of the area;
- B. Decoration of any public place in the area;
- C. Promotion of public events which are to take place on or in public places in the areas;
- D. Furnishing of music in any public place in the area;
- E. The general promotion of retail trade activities in the area.
- G. Similar improvements, services or activities which are reasonably calculated to assist retail activity.

3.35.170 Collection of assessment.

The assessment provided by this chapter shall be collected at the same time and in the same manner as is provided in this code for the collection of business license taxes or as otherwise provided in an agreement authorized by Section 3.35.180.

(Ord. 1125 §10)

3.35.180 Power to contract.

The council may contract from time to time with a nonprofit, tax-exempt corporation, the purpose of which, as specified in the purpose clause of its articles, shall be to carry out the purposes for which this assessment is levied and as provided in this chapter. In the event such agreement is made, it shall provide that the corporation shall present a budget of proposed expenditures and purposes to the city manager, for investigation and report to the council upon the advisability and feasibility of the proposed expenditures and improvements, and upon approval or modification of approval of the budget requests, the council shall allocate and direct payment of such amounts as it shall determine to the contracting agency by the city administrative services department.

3.35.190 Benefit Zone Procedures.

All provisions of this part applicable to the establishment, modification, or disestablishment of a parking and business improvement area apply to the establishment, modification, or disestablishment of benefit zones. The city council shall, to establish, modify, or disestablish a benefit zone, follow the procedure to establish, modify, or disestablish a parking and business improvement area.

3.35.200 Disestablishment of area; resolution of intention.

A. The city council may disestablish a district by ordinance after a hearing before the city council. The city council shall adopt a resolution of intention to disestablish the area at least 15 days prior to the hearing required by this section. The resolution shall give the time and place of the hearing.

B. This procedure may be initiated by the council upon its own motion, or upon petition to the council for disestablishment. A petition shall be signed by licensed business owners in the district who, (1) in the aggregate, pay more than 50% of the total assessments paid within the

within a 30-day period, and in this connection, the date that each signer signed the petition shall be set opposite the signer's name.

C. The finance director shall then compute the total amount of assessments paid by each of said signers, and if the total so paid exceeds 50% of the total assessments levied and paid under this chapter, then the council shall adopt and publish a resolution of intention mentioned in the aforesaid section 3.34.200.

D. Neither the initiation of the procedure by the council upon its own motion, nor pursuant to the petition herein provided for, shall limit the council's discretion with respect to the adoption or non-adoption of a disestablishment ordinance.

3.34.210 Limitation Period.

The validity of an assessment levied under this part shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36535. Any appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment."

SECTION 2. The city council finds and determines that the enactment of this Ordinance is not a project under the California Environmental Quality Act (CEQA) (Cal. Pub. Resource Code §§ 21000 *et seq.*) in that activities described in the Ordinance are a continuing administrative activity of the city involving general policy and procedure making and organization or administrative activities of governments that will not result in direct or indirect physical changes in the environment. (State CEQA Guidelines, Cal. Code of Regs., Title 14, § 15378.) Therefore, no environmental assessment is required or necessary.

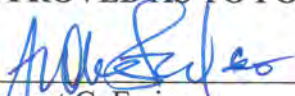
SECTION 3. If any part of this Ordinance, or its application to any individual, entity, or circumstance, is held to be invalid, the remainder of the Ordinance, including the application or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

SECTION 4. The city clerk shall attest to the passage and adoption of this Ordinance, and shall cause same to be posted as required by law, and this Ordinance shall take effect thirty (30) calendar days after its adoption.

THE FOREGOING ORDINANCE was adopted by the City Council of the City of Chico at its meeting held on November 20, 2018, by the following vote.

AYES: Coolidge, Fillmer, Ory, Sorensen, Morgan
NOES: Stone
ABSENT: None
ABSTAIN: None
DISQUALIFIED: Schwab

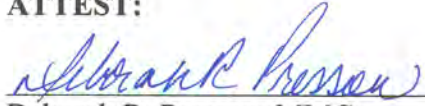
APPROVED AS TO FORM:



Vincent C. Ewing
*City Attorney

*Pursuant to the Charter of the City of Chico
Section 906(E)

ATTEST:



Deborah R. Presson, MMC
City Clerk