

1 **ORDINANCE NO. 2572**
2 **(Codified)**

3 **ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHICO AMENDING**
4 **TITLE 15, CREATING CHAPTER 15.70 "FIBER UTILITY" OF THE CHICO**
5 **MUNICIPAL CODE TO ESTABLISH A CITY OWNED FIBER UTILITY**

6 **WHEREAS**, the City of Chico is a Charter City, established under the Constitution of the
7 State of California, has the power to make and enforce within its jurisdictional limits all laws and
8 regulations in respect to municipal affairs subject only to such restriction and limitations as may
9 be provided in the Constitution of the State of California or provision of the City Charter; and

10 **WHEREAS**, the City of Chico (City) recognizes that broadband is no longer an amenity, but
11 essential for access to education, economic transactions, healthcare, government services, and many
12 other interactions in society; and

13 **WHEREAS**, the Broadband Master Plan Interim Report identified four key objectives:
14 improving the affordability of internet access, enabling competitive service provider options for
15 residents and businesses, creating infrastructure that will provide needed speeds and reliability for
16 50+ years, and addressing the existing gaps in digital access and equity; and

17 **WHEREAS**, the purpose of this ordinance is to establish a City Fiber Utility to provide
18 broadband access to meet the needs of City departments, public safety organizations, other publicly
19 owned and operated facilities, community anchor institutions, businesses, and residents; and

20 **WHEREAS**, the City Fiber Utility will begin operating as a pilot project using American
21 Recovery Plan Act (ARPA) funding to demonstrate costs and prepare for an efficient expansion.

22 **NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Chico that the
23 following ordinance amending Chapter 15.70 of the Chico Municipal Code shall be amended to
24 create a City Fiber Utility as a division under the Administrative Services Department as follows:

25 **SECTION 1.** Amend Chapter 15.70 as follows:

26
27 **CHAPTER 15.70: CITY FIBER UTILITY**

28 **15.70.010** Purpose

1	<u>15.70.020</u>	Definitions
2	<u>15.70.030</u>	Ownership, Control and Management
3	<u>15.70.040</u>	No Obligation to Serve
4	<u>15.70.050</u>	Applicability
5	<u>15.70.060</u>	Transfer of Rights Prohibited
6	<u>15.70.070</u>	Billings
7	<u>15.70.080</u>	Limitations
8	<u>15.70.090</u>	Rights of Way
9	<u>15.70.100</u>	Liability for Interruptions
10	<u>15.70.110</u>	Shut-Down for Repairs
11	<u>15.70.120</u>	Interference with the Fiber Utility
12	<u>15.70.130</u>	Protection of the Customer's Equipment
13	<u>15.70.140</u>	Tampering with Fiber Utility Prohibited
14	<u>15.70.150</u>	Theft of Access or Use
15	<u>15.70.160</u>	Violations and Penalties

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15.70.010 PURPOSE

The purpose of this Chapter is to establish a City Fiber Utility as a division of the Administrative Services Department (ASD) which provides broadband access to meet the needs of:

1. City Departments
2. Public Safety Organizations
3. Other Publicly Owned and Operated Facilities
4. Community Anchor Institutions
5. Businesses
6. Residents

To improve the affordability of internet access in and around the Utility's service area.

1 To increase competition among retail broadband service providers by providing Open Access to the
2 City Fiber Utility.

3
4 To create infrastructure that will be able to provide the speeds and reliability not just for today but
5 for what will be needed in the next 50+ years.

6
7 To address existing gaps in digital access and digital equity thereby enabling greater participation in
8 key aspects of present and future areas of society.

9
10 To protect the economic vitality of the City by providing the broadband transport service and fiber
11 facilities leasing required by broadband service providers.

12
13 To reduce the cost of maintaining the sidewalk, pavement and public facilities located within the
14 public right-of-way by minimizing the number of pavement cuts and dislocation of other public
15 facilities necessitated by the construction or installation of fiber optic facilities.

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17 **15.70.020 DEFINITIONS**

18 As used in this chapter, the following terms shall have the meaning set forth below, unless the context
19 clearly dictates a different meaning:

20 A. **ACCESS:** Access to or use of the Fiber Utility in the form of either broadband transport
21 service or Dark Fiber leasing.

22 B. **CITY:** The City of Chico, California.

23 C. **CUSTOMER:** A retail or wholesale user of the Fiber Utility.

24 D. **DARK FIBER:** A single fiber strand without any light flowing through it.

25 E. **DEMARCATIION POINT:** The point of connection on an Optical Network Terminal or
26 Network Interface Device at which the City Fiber Utility ends and a point of interconnection
27 is established for the customer's use.

28 F. **DIRECTOR:** The Administrative Services Director, or their appointed designee.

1 G. **FIBER UTILITY:** The City owned Fiber Utility, including all fiber, facilities, equipment,
2 and appurtenances.

3 H. **FTTP:** Fiber to the premise.

4 I. **PLANT:** A single fiber running from point to point provided to a Customer as a Dark Fiber
5 lease.

6 J. **PROVIDER:** A retail broadband service provider.

7 K. **SERVICE:** Any future or current, retail or customer broadband service which may be
8 transported utilizing the Fiber Utility.

9 L. **SUBSCRIBER:** A current or potential Provider Customer.

10 M. **TRANSPORT:** Broadband transport service consisting of Ethernet services as supported by
11 the City Fiber System.

12
13 **15.70.030 OWNERSHIP, CONTROL AND MANAGEMENT**

14 The City shall have exclusive and complete ownership, control and management of the Fiber Utility
15 within all Demarcation Points, which shall include the device or interface provided for
16 interconnection. The City may make such rules and regulations as are necessary for the operation of
17 the Fiber Utility both inside and outside the City limits.

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19 **15.70.040 NO OBLIGATION TO SERVE**

20 The City shall have no obligation to provide Access to any provider or subscriber. The City reserves
21 the right to limit or refuse Access at its sole discretion, provided Access shall not be denied or limited
22 on the basis of race, religion, age, national origin or gender.

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24 **15.70.050 APPLICABILITY**

25 The provisions of this chapter shall apply only to the Fiber Utility. Nothing herein shall be construed
26 or deemed to regulate the delivery of communications or data services over or across lines, facilities,
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1 or equipment owned by a private communications provider, or which may be located in the public
2 right-of-way pursuant to a franchise, lease, or other license or privilege granted by the City.

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4 **15.70.060 TRANSFER OF RIGHTS PROHIBITED**

5 All rights to Access and any rights or privileges arising under the provisions of this Chapter shall not
6 be transferred to any person or entity without the express written approval of the Director.

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8 **15.70.070 BILLING**

9 Fiber Utility Access provided by the City shall be billed to the Customer in accordance with a
10 schedule of rates as established by the recommendation of the Director and approved by City Council
11 through resolution.

12
13 **15.70.080 LIMITATIONS**

14 Fiber Utility Access may be supplied under a given rate schedule provided that the Fiber Utility has
15 the ability to meet the requirements of the rate schedule applicable thereto. The City shall not be
16 obligated to construct extensions or install the additional facilities necessary to meet a Customer's
17 needs except as explicitly authorized by the Director.

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20 Nothing herein shall be construed or deemed to prevent the City from negotiating separate contracts
21 with any customer solely for the purpose of obtaining assistance in constructing or installing
22 additional plant for the benefit of said customer. Such negotiations shall be handled by the Director
23 and approved by City Council.

24
25 **15.70.090 RIGHTS OF WAY**

26 The City may condition providing transport or plant upon the customer's dedication or conveyance
27 to the City of a utility easement for the installation, operation and maintenance of the City's fiber
28 system, over, across and upon property owned or controlled by the customer or the customer's

1 landlord. Such utility easement may also be used for the purpose of providing Access to other
2 customers of the City. Such utility easement shall permit Access thereto by authorized representatives
3 of the City at all reasonable hours or at any time in any emergency situation. By acceptance of or
4 submission of an application for fiber optic access, the customer shall be deemed to waive any claim
5 for damages to the customer's property or equipment located within such utility easement, arising
6 from the operation or maintenance of the Fiber Utility therein. Such acceptance or application shall
7 also be deemed to constitute a waiver of any claim for damages arising from a taking or any severance
8 damages with respect to a customer's underlying fee simple interest.

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10 **15.70.100 LIABILITY FOR INTERRUPTIONS**

11 The City shall not be liable for any loss, injury or damage of any kind, including but not limited to
12 consequential, special and punitive damages, resulting from the interruption, reduction, loss or
13 restoration of Access from any cause, including without limitation any loss by fire, flood, accident,
14 casualty, sabotage, terrorist act, strike, labor slow-down, act of God or the public enemy or failure or
15 inadequacy of the Fiber Utility. The City disclaims any express or implied warranty of
16 merchantability or fitness for a particular purpose and the delivery of Access to any customer shall
17 not be construed as or deemed to be the delivery of goods under the California Uniform Commercial
18 Code. By acceptance of transport or plant, the customer agrees to, and shall be deemed to, waive any
19 and all claims for damage or loss to the customer's lines, facilities, or communications equipment
20 caused by any act or omission of the City, however, nothing herein shall be deemed or construed as
21 a waiver of any claim for damage or liability arising out of the gross negligence or malicious act of
22 the City, or its agents.

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24 **15.70.110 SHUT-DOWN FOR REPAIRS**

25 For the purpose of making necessary repairs, upgrades or changes to its Fiber Utility, or to avoid
26 damage to property or to persons, the City may without prior notice to the customer suspend Access
27 for such periods as may be reasonably necessary to make such repairs, upgrades or changes and the
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1 City shall not be liable for damage of any kind, direct or indirect, as a result of such discontinuance
2 of Access.

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4 **15.70.120 INTERFERENCE WITH THE FIBER UTILITY**

5 The City may refuse to supply Access where there is a possibility that the delivery of such may
6 seriously impair or disrupt any other customers, or which may disrupt the operation of the Fiber
7 Utility. The City may also discontinue or disconnect Access for a Customer if the Customer, by their
8 use of the Fiber Utility, is seriously impairing any other Customer's use of the Fiber Utility. The City
9 may also, without prior notice, suspend or disconnect any customer using the Fiber Utility for the
10 purposes of delivering any virus, spam, spyware, denial of service attacks, or any other illegal or
11 malicious purpose which has the effect of or is intended to impair or impede the operation of the
12 Fiber Utility, the internet, or any public or private computer or computer network connected thereto
13 or for the purpose of obtaining illegal or unauthorized access to other computers or networks
14 connected to the Fiber Utility.

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16 **15.70.130 PROTECTION OF THE CUSTOMER'S EQUIPMENT**

17 The customer is solely responsible for the selection, installation and maintenance of all equipment
18 and wiring on the customer side of the Demarcation Point. The customer shall install and maintain
19 suitable protective devices and equipment to protect life and property from harm or injury and the
20 City assumes no duty to warn or otherwise assist the customer in the selection or use of such
21 protective devices.

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23 **15.70.140 TAMPERING WITH FIBER UTILITY PROHIBITED**

24 Other than City representatives working under the supervision of the Director, no person shall
25 connect to, adjust, tamper with or make any alteration or addition to the Fiber Utility, without having
26 first obtained written permission from the Director. Any person who willfully or maliciously causes
27 damage to, interference with or obstruction to the efficient operation of the Fiber Utility shall be
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1 guilty of a misdemeanor. Any person who causes such damage shall in addition to any criminal fines
2 or penalties, be liable to the City for any reasonable damages which may be proximately caused by
3 such damage or interference. Such amounts may be included upon the customer's regular monthly
4 billing statement for utility service and upon the customer's failure or refusal to pay such charges,
5 Fiber Utility Access or any other public utility service provided by the City, may be terminated in
6 accordance with the procedures set forth in this chapter.

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8 **15.70.150 THEFT OF ACCESS OR USE**

9 It shall be unlawful for any person to make any connection to or install or construct any facility or
10 equipment with the specific intent of obtaining Access from or making use of the Fiber Utility,
11 without paying for such Access or without paying the fees and charges established by the provisions
12 set forth in this chapter.

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14 **15.70.160 VIOLATIONS AND PENALTIES**

15 Any violation of the provisions of this chapter shall be an infraction punishable by a fine in an amount
16 established by Section 1505 of the Charter of the City of Chico. Violations of this chapter shall be
17 deemed an infraction unless such violation is designated in this chapter as a misdemeanor.

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19 **SECTION 2. EFFECT ON OTHER LAWS.** Nothing in this Ordinance shall be construed to allow
20 persons to engage in conduct that violates state law or other local ordinance, endangers others, causes
21 a public nuisance, allows the use or misuse in an unlawful manner or inconsistent with state or federal
22 law or other local ordinance.

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24 **SECTION 3. SEVERABILITY.** If any section, subsection, line, sentence, clause, phrase, or word
25 of this Ordinance is for any reason held to be invalid or unconstitutional, either facially or as applied,
26 by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the
27 remaining portions of this Ordinance which can be given effect without the invalid provision or
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1 application, and to this end the provisions of this Ordinance are severable. The City Council of the
2 City of Chico hereby declares that it would have passed this Ordinance, and each and every individual
3 section, subsection, line, sentence, clause, phrase, or word without regard to any such decision.

4 **SECTION 4. EFFECTIVE DATE.** This Ordinance shall be effective thirty (30) days following the
5 adoption date.

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8 **SECTION 5. CERTIFICATION.** The City Clerk shall certify to the passage and adoption of this
9 Ordinance and shall cause the same to be published or posted in the manner required by law.

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11 **THE FOREGOING ORDINANCE** was duly and properly introduced at a regular
12 meeting of the City Council held on 2/1/, 2022 and was thereafter, adopted by the City Council
13 of the City of Chico, California at its City Council meeting held on 2/15, 2022, by the
14 following votes:

15 AYES: Bennett, Brown, Morgan, O'Brien, Tandon, Reynolds, Coolidge


16 NOES: None

17 ABSENT: None


18 ABSTAINED: None

19 DISQUALIFIED: None

20
21 ATTEST:

22 
23
24 Deborah R. Presson, City Clerk

APPROVED AS TO FORM:

25 
26 Vincent Ewing, City Attorney*

27 *Pursuant to The Charter of the
28 City of Chico, Section 906(E)