



MEMORANDUM

TO: City Council

FROM: Jessica Matson, Legislative & Information Services Director/City Clerk

SUBJECT: Consideration of Adoption of a Resolution Establishing an Electronic Signature Use Policy

DATE: January 24, 2023

SUMMARY OF ACTION:

Adoption of a Resolution establishing a policy for the use of electronic signatures for certain documents.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

Utilizing digital signatures will create administrative efficiencies that may result in marginal cost savings over time. The costs of the software licenses required to implement this Policy have been included in the budget for this fiscal year.

RECOMMENDATION:

Adopt a Resolution establishing an Electronic Signature Use Policy for the City and authorizing the City Manager to amend the Policy and adopt additional guidelines as necessary to implement the Policy's stated purpose.

BACKGROUND:

The City has been using traditional "wet" signatures for documents between the City and external parties. Many individuals, businesses, vendors, contractors, and agencies regularly use electronic signatures to conduct transactions. Neighboring cities such as the Cities of Morro Bay, Pismo Beach, and San Luis Obispo utilize electronic signatures for the execution of documents. Additionally, the use of electronic signatures has significantly increased as a result of the COVID-19 pandemic.

Under California law, the use of electronic signatures is at the option of the parties, including public agencies, involved in a transaction. The federal Electronic Signatures in Global and National Commerce Act permits, but does not require, parties to use electronic signatures. Two State laws govern the use of electronic signatures for public agencies. The Uniform Electronic Transactions Act (Civil Code section 1633.1 et seq.) governs "electronic signatures," and Government Code Section 16.5 governs "digital signatures." An "electronic signature" is "an electronic sound, symbol, or process, attached to or

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logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.” (Civ. Code §16.33.2(h).) A “digital signature” is an electronic identifier, created by a computer, intended by the party using it to have the same force and effect as the use of a manual signature. (Gov. Code, §16.5(d).) A digital signature is a subset of an electronic signature and is more secure and reliable than other forms of electronic signatures. Electronic signatures vary in their level of security, user-friendliness, and verifiability. The conditions under which they are accepted for public records are a governmental affair for the City to determine and for which the City may set policy.

Policy Context

[U.S. Code – Chapter 96 – Electronic Signatures in Global and National Commerce](#) – As stated in the Act, the General Intent of the ESIGN Act is:

1. a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and
2. a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

[California Civil Code 1633.1 – 1633.17: The California Uniform Electronic Transactions Act \(UETA\)](#) – The objective of UETA is to place electronic records and signatures on the same level as paper contracts and written signatures. It applies only to those transactions between parties or entities which have agreed to conduct their business transactions by electronic means.

[California Government Code 16.5](#) – Specifically allows public entities to utilize e-signatures and details acceptable attributes, as follows:

- a. In any written communication with a public entity, as defined in Section 811.2, in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section. If a public entity elects to use a digital signature, that digital signature shall have the same force and effect as the use of a manual signature if and only if it embodies all of the following attributes:
 - i. It is unique to the person using it.
 - ii. It is capable of verification.
 - iii. It is under the sole control of the person using it.
 - iv. It is linked to data in such a manner that if the data are changed, the digital signature is invalidated.
 - v. It conforms to regulations adopted by the Secretary of State. Initial regulations shall be adopted no later than January 1, 1997. In developing these regulations, the secretary shall seek the advice of public and private entities, including, but not limited to, the Department of Information

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Technology, the California Environmental Protection Agency, and the Department of General Services. Before the secretary adopts the regulations, he or she shall hold at least one public hearing to receive comments.

- b. The use or acceptance of a digital signature shall be at the option of the parties. Nothing in this section shall require a public entity to use or permit the use of a digital signature.
- c. Digital signatures employed pursuant to Section 71066 of the Public Resources Code are exempted from this section.
- d. "Digital signature" means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (h) of Section 1633.2 of the Civil Code.
- e. Nothing in this section shall limit the right of a public entity or government agency to use and accept an "electronic signature" as defined in subdivision (h) of Section 1633.2 of the Civil Code.
- f. Regulations adopted by the Secretary of State to implement this section apply only to a public entity's use of a "digital signature" and not to use of any other type of "electronic signature" authorized in the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code).

It should be noted that some specific types of documents may still require hand-written (wet) signatures, or in person witnessing such as is currently the case with notarizations. Therefore, each type of document authorized to use e-signatures should be vetted by the City Attorney, City Manager, City Clerk, or other City expert on the related document codes.

ANALYSIS OF ISSUES:

The City is seeking additional methods to streamline its document signing process with external partners to improve productivity and save resources. Using appropriate electronic signature technology would allow the City to collect and preserve signatures on documents quickly, securely, and efficiently, and also reduce use of paper, facilitate document retention, and generally contribute to a sound City-wide records management system.

The Federal Electronic Signatures in Global and National Commerce Act (ESIGN) of 2000 established the equivalency of e-signatures and hand-written signatures for legally binding documents. The UETA authorizes the use of an electronic signature for transactions and contracts among parties in California, including a government agency. Further, the State Legislature passed AB 2296 in 2016 to clarify that a digital signature may also be used to satisfy the requirements of an electronic signature under the UETA.

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Electronic and digital signatures have been used widely in the private sector, such as in real estate and mortgage transactions. Notably, they are also used by the court system where they allow for electronic filings of documents, including briefs.

The mainstream acceptance of signing documents electronically in place of manual, hand-written “wet” signatures has led to increased convenience and efficiencies, decreased time and cost associated with transmitting, approving and retaining physical documents, as well as creation of an audit trail of the modification, editing, and final signing of documents. The environment is also benefitted by the widespread adoption of e-signatures with less raw source tree and water use in paper creation, a resultant lessening of CO2 production from that process as well as transportation of raw materials and paper distribution, and finally end- of-lifecycle paper waste reduction.

The City seeks to provide its residents, businesses, vendors, and contractors the opportunity to submit information or transact business with the City electronically to the greatest extent practicable. City staff has increasingly been asked to execute contracts electronically under the provisions of the Uniform Electronic Transaction Act (UETA). A policy from the City Council authorizing electronic signatures will facilitate the City doing so.

The Electronic Signature Use Policy (Policy) establishes guidelines for the use and acceptance of electronic signatures in lieu of hand-written signatures, when permitted by law, and establishes when an electronic signature may replace a hand-written signature.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Adopt the Resolution establishing an Electronic Signature Use Policy;
2. Modify and adopt the Resolution establishing an Electronic Signature Use Policy;
- or
3. Provide other direction to staff.

ADVANTAGES:

Utilizing electronic signatures will create administrative efficiencies that may result in marginal cost savings over time.

DISADVANTAGES:

No disadvantages are identified at this time.

ENVIRONMENTAL REVIEW:

No environmental review is required for this item.

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PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

Attachments:

1. Proposed Resolution