

Agenda Report

May 4, 2020

TO: Honorable Mayor and City Council
FROM: Michele Beal Bagneris, City Attorney
SUBJECT: ADOPTION OF A RESOLUTION AUTHORIZING THE USE OF ELECTRONIC SIGNATURES AND DIGITAL SIGNATURES

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the actions proposed herein are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061 (b)(3) (Common Sense Exemption); and
2. Adopt a Resolution Authorizing the Use of Electronic Signatures and Digital Signatures.

BACKGROUND:

It is recommended that the Council authorize the use of electronic signatures and digital signatures, where made in conformance with applicable law. Various City documents must be signed to be given legal effect, such as ordinances (Section 509 of the Charter) and contracts (Section 1001 of the Charter). Incorporating electronic signatures and digital signatures into contracts and other citywide processes will be beneficial by increasing the efficiency of service delivery.

Electronic Signatures

California's version of the Uniform Electronic Transactions Act (UETA), Civil Code Section 1633.1 *et seq*, gives electronic signatures the same legal effect as a pen-and-ink (manual) signature. The UETA defines an "electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record." The UETA's electronic signature requirements are simpler than digital signatures. One of the most common forms of an electronic signature is what taxpayers often use to sign their income tax returns. Other examples include a scanned image or photograph of a person's manual signature, or a mouse-created signature on a computer screen.

Digital Signatures

Digital signatures are a type of electronic signature that has the same force and effect as a manual signature on legally-binding documents. The use of digital signatures is becoming increasingly prevalent in the public sector. A digital signature is, in short, the process of accepting and securing an online signature -- relying more on the encryption technology, rather than the party's actual signature. Government Code Section 16.5 authorizes public entities to accept digital signatures, and the Secretary of State maintains an approved list of digital signature verification authorities.

If the Council adopted this resolution, Department of Information Technology staff intends to explore the use of digital signatures for contracts, expanding to other documents, over time. The language of contracts would not change as a result of this resolution; rather, this resolution would only result in changes to the signature workflow, which would be facilitated electronically.

Although Government Code 16.5 sets forth requirements for the use of "digital signatures," it does not limit the manner in which the City may use or accept electronic signatures generally. Moreover, as a charter city, Pasadena retains plenary authority over municipal affairs, which we believe includes procedures and requirements for entering into contracts.

Purpose of the Resolution

As a general rule, the proposed resolution would allow documents to be signed using electronic signatures or digital signatures. For example, the City could prepare a contract, transmit the agreement electronically to the other party, and require the other party to return the agreement with an attached digitized image of their hand written signature. However, some less formal forms of what may qualify as an electronic signature may not be appropriate for every document, particularly those that involve significant risk and/or involve confidential matters. In those cases, a manual signature or a digital signature would be a better option – to that end, the resolution gives the City Manager the discretion to "determine the documents" where, for example, electronic signatures may be used.

Even if the Council adopts the resolution, there will be instances in which electronic signatures or digital signatures cannot be used. For example, one court has held that electronic signatures to endorse an initiative petition are not permitted, and some transactions require that a person's signature to be signed in the presence of a notary public.

COUNCIL POLICY CONSIDERATION:

The proposed resolution furthers the City Council's strategic planning goals to maintain fiscal responsibility and stability, and to increase conservation and sustainability.

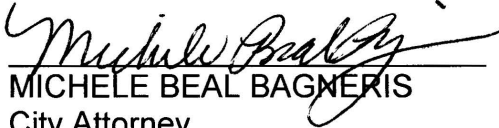
ENVIRONMENTAL ANALYSIS:

Under the California Environmental Quality Act (CEQA), the resolution authorizing the use of digital signatures is not a "project" and is therefore not subject to environmental review pursuant to State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption).

FISCAL IMPACT:

There is no fiscal impact as a result of this action, but cost-savings may be achieved in reduction of paper and staff time in circulating electronic (in lieu of paper) documents for signatures.

Respectfully submitted,


MICHELE BEAL BAGNERIS
City Attorney

Approved by:


STEVE MERMELL
City Manager

Attachment – Resolution