



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lee Wilcox
Rob Lloyd

SUBJECT: SEE BELOW

DATE: May 21, 2018

Approved

Date

6/1/18

SUBJECT: ORDINANCE AUTHORIZING ELECTRONIC SIGNATURES ON DOCUMENTS USED AND ACCEPTED BY THE CITY OF SAN JOSE

RECOMMENDATION

Approve an ordinance amending Title 1 of the San José Municipal Code by adding Chapter 1.21 to authorize electronic signatures on documents used and accepted by the City of San José.

OUTCOME

Approval of the proposed ordinance will authorize the use of electronic signatures on City documents while allowing the City to strike a balance between efficient business processes and the need for signature security and integrity.

EXECUTIVE SUMMARY

The use of electronic signatures on legally-binding documents has become increasingly prevalent in the private sector, but has yet to find widespread adoption by government agencies. The benefits of electronic signatures are simple and numerous: they cut down on the paper, time, the cost associated with transmitting and approving physical documents, and they can offer an easily accessible audit trail which identifies when documents are modified and/or signed.

At a fundamental level, an electronic signature is any electronic symbol that represents an individual's acceptance or adoption of a statement or transaction. Thus, an electronic signature may be as simple as typing a name or checking a box. One common concern with electronic signatures is the ability to verify the identity of the person affixing the signature. While several technologies have developed to address this issue, some solutions insert additional, cumbersome steps into a signature process that may obviate some of the advantages of accepting electronic signatures.

This ordinance would authorize the use of electronic signatures on City documents while allowing the City to strike a balance between efficient business processes and the need for signature security and integrity. Specifically, this ordinance would: (1) establish that electronic signatures shall be effective on City documents so long as certain guidelines regarding the security and integrity of electronic signatures are met; (2) authorize the City Manager to determine the technologies and/or vendors that presumptively satisfy these guidelines; and (3) authorize the City Manager to determine the level of security required for various types of documents.

BACKGROUND

The general legal framework for the use of electronic signatures on electronic records has been in place for over a decade. In 1999, California adopted a version of the Uniform Electronic Transactions Act (UETA), guaranteeing that electronic signatures would have the same legal effect as a “wet” or manual signature (Civ. Code §§ 1633.1-1633.17.) In 2000, Congress passed the Electronic Signatures in Global and National Commerce Act (E-SIGN Act), mandating the same treatment of electronic signatures in interstate or foreign commerce. (15 U.S.C. 7001.)

In addition, in 1995, five years before the UETA and E-SIGN Act were adopted, the California Legislature passed a statute authorizing public entities to accept “digital signatures”¹ if and only if they comply with stringent verification procedures established by the Secretary of State (Gov. Code § 16.5.) The Secretary of State adopted regulations in 1998 approving the use of digital signatures only if they could be verified using Public Key Cryptology (PKI) or Signature Dynamics technologies. (2 C.C.R. § 22003.) These regulations have not been updated in the past 15 years, and neither the UETA nor the E-SIGN Act addressed the implications to public entities.

Assembly Bill 2296 (Lowe) now clarifies that Government Code Section 16.5 and the Secretary of State Regulations do not limit the City’s ability to accept “electronic signatures” that are executed in compliance with UTEA in Civil Code Section 1633.2(h). This clarification allows the City, if it so chooses, to accept electronic signatures in lieu of “wet” signatures. Unlike Government Code Section 16.5 and the requirements for “digital signatures”, the UTEA does not mandate a particular format for an acceptable electronic signature. Rather, an electronic signature, is any “sound, symbol or process attached to or associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.” (Civil Code §1633.2(h).)

¹ Government Code Section 16.5 defines “digital signature” as “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.” [Gov. Code §16.5(d).] As discussed above, a “digital signature” must comply with Government Code Section 16.5 and the California Secretary of State’s Regulations.

In addition, in her memo dated December 2016, the City Auditor recommended that certain transactions, such as procurement of mobile devices, be streamlined and automated using a user-friendly portal with online workflow and an electronic approval process². Based on those audit recommendations and feedback from City departments, the Information Technology Department defined the Business Process Automation Strategic Initiative as part of the 2017-2019 IT Strategic Plan approved by City Council in March 2017³.

ANALYSIS

The adoption of electronic signatures, as authorized by the proposed ordinance and policy, directly supports the City's ability to enable such online processes and workflows. Through this action, the City will be allowed to consent to the use of electronic signatures that meet the requirements established. The City Manager may update the City policy that governs electronic signatures as the technology evolves. The Information Technology Department (ITD) shall set the protocols, technical standards, and platforms that enable adoption of electronic signatures and will set standards in accordance with the City's Information Security Policy.

This ordinance would authorize the use of electronic signatures on City documents while allowing the City to strike a balance between efficient business processes and the need for signature security and integrity. Specifically, this ordinance would: (1) establish that electronic signatures shall be effective on City documents so long as certain guidelines regarding the security and integrity of electronic signatures are met; (2) authorize the City Manager to determine the technologies or vendors that presumptively satisfy these guidelines; and (3) authorize the City Manager to determine the level of security required for various types of documents.

In order to develop an Electronic Signature Policy to implement this proposed ordinance, the City Attorney's Office, City Manager's Office and ITD surveyed City departments to identify forms and processes where the use of electronic signatures may be desirable. The survey results concluded that over 70 document types, supporting internal and external business transactions, can be improved through transforming them into digitized workflows, including, but not limited to, the acceptance of electronic signatures. The City retains the flexibility of imposing higher

² 16-11 MOBILE DEVICES: IMPROVEMENTS NEEDED TO ENSURE EFFICIENT, SECURE, AND STRATEGIC DEPLOYMENT (Issued 12/16) The purpose of this audit was to assess the cost, usage, and management of the growing number of mobile devices used by City employees in light of rapid advancements in mobile technologies and the City's changing technological needs. Recommendation #11: To reduce ordering turn-around and demands on staff time, we recommend the Administration: a) Allow departments to order mobile devices (cellphones, smartphones, hotspots, tablets, and laptops) and accessories directly, through appropriate citywide purchase orders; b) Develop a process for IT or department staff to configure devices to meet information security standards in the Mobile Device Policy; c) Update City policy accordingly. Per City Council direction: develop a digital tool to centralize and manage orders for mobile devices across the City.

³ http://sanjose.granicus.com/MediaPlayer.php?view_id=&clip_id=9630&caption_id=22717859

security requirements to govern the use of electronic signature for transactions that are deemed high risk and external-facing.

Finally, this proposed ordinance would allow the City Manager to designate certain classes of documents for which electronic signatures will be accepted with fewer verification measures. For example, multi-factor identity authentication or password protection will likely require the City to invite a particular individual to sign a document. While this would streamline the purchasing or employment processes, it would add unnecessary additional steps to an application to a City board or commission. Thus, on board and commission applications or other contexts where the City accepts signed applications or documents from the public generally, a less formal electronic signature may be more appropriate.

EVALUATION AND FOLLOW-UP

With City Council approval of this recommendation, the City Manager and ITD will finalize the Administrative Electronic Signature Policy. In addition to the policy, it is anticipated that there will be an informational guideline with frequently asked questions which will assist staff in navigating the circumstances where electronic signatures may be used. The Electronic Signature Policy, the requirements for the Business Process Automation Initiative, and the technical standards for electronic signature will be utilized to competitively evaluate and procure software or other technology solution(s) in the next several months. Depending upon the results of the bidding, Council may need to approve the contract. Request for funding will be addressed through the City's budget process. Once software or other technology solution(s) are competitively procured, an initial Pilot Program will focus on automating a list of the City's paper forms, prioritized for productivity savings with visible business benefit.

POLICY ALTERNATIVES

Alternative #1: The Council does not adopt an Ordinance accepting electronic signatures.

Pros: Supports current department autonomy in electronic signature process and solution.

Cons: This alternative allows Council to take a passive stance in the adoption of electronic signatures moving forward. Organizational use and impacts would be expected to be inconsistent

Reason for not recommending: Lack of governance structure will result in inconsistent process, inappropriate use, and diverse solutions for the City managing electronic signatures. Such environment would create legal and security risks for the City.

Alternative #2:

The Council directly adopts the Electronic Signature Policy, rather than delegating the policy development and revision responsibility to the City Manager and resolves that the City should pursue use of electronic signatures where it supports improving City processes.

Pros: Allows the Council to have greater oversight on types and nature of electronic signature transactions.

Cons: Decreases the flexibility for the City Manager to be responsive and adaptive to electronic signature transactions as well as classifications of document types based on legal and security requirements. Every change to the policy would require Council review and approval.

Reason for not recommending: Each new scenario would require Council review and approval, making the administrative process unduly burdensome.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 12, 2018 Council Meeting.

COORDINATION

The electronic signature project was coordinated with all City departments, including the City Attorney's Office, and the City Clerk's Office to obtain input regarding how electronic signatures may increase efficiency, while maintaining appropriate security for transactions.

COMMISSION RECOMMENDATION/INPUT

This item does not require any input from a board or commission.

COST SUMMARY/IMPLICATIONS

There is no cost for approving staff's recommendation and allowing the City to use and accept electronic signatures. However, there will be costs related to usage as the practice grows. Transaction costs will most likely occur where secure transactions are used. For this reason, some cities procure a solution using a by-volume cost model with an annual cap on spend. Examples are City of Palo Alto and County and City of San Francisco. Their spend reflected a range from \$75,000 to \$1 million over three to four years, an average range of \$150,000 to \$400,000 per year. Other cities such as Los Angeles have controlled costs by limiting the number of transactions to be conducted by electronic signature⁴. Some costs can be controlled by selecting a vendor that can simultaneously assist with both the electronic signature solution and the Business Process Automation solution. The City will need to identify and implement the practice and cost model that best fits the organization, once practices have been piloted.

⁴⁴ For example, the City of Los Angeles limits the number of electronic signature transactions to ensure that the annual expenditure does not exceed \$200,000.

City of Palo Alto: <https://www.cityofpaloalto.org/civicax/filebank/documents/51799>
http://mission.sfgov.org/oca_bid_attachments/FA38958.pdf

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Thus, the cost analysis will be used to inform budget requirements and consequent requests for the Business Process Automation initiative. Product evaluation, solution provisioning, and budget estimates will be part of the Business Process Automation (BPA) project and coordinated through the Smart Cities and Service Improvement Committee. Request for funding will be addressed through the City's budget process.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

/s/
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Chief of Staff

/s/
ROB LLOYD
Chief Information Officer

For questions, please contact Rob Lloyd, Chief Information Officer, at (408) 535-3566.