



Legislation Text

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Report to Mayor and City Council

Tuesday, November 07, 2023

Consent

SUBJECT:

CONSIDER ADOPTION OF RESOLUTION NO. 23-170, REPEALING RESOLUTION NO. 21-119 AND REQUIRING ONLY COMPLIANCE WITH APPLICABLE STATE AND FEDERAL LAW REGARDING NOTARIZATION OF ELECTRONIC AND DIGITAL SIGNATURES FOR CITY CONTRACTS (CITY COUNCIL)

I. SUMMARY

Prior to the COVID-19 local emergency, the City required notarization (i.e., notary acknowledgment) of consultants'/vendors' signatures on contracts for purchase of goods and services, as is stated in Administrative Policy & Procedure ("APP") No. 2.6.02 (attachment 1), subsection (D), subparagraphs (3)-(4).

During the declared local emergency related to COVID-19, in March of 2020, the Carson Disaster Council issued an order waiving the notary requirement. As a Disaster Council action, the order was effective for the duration of the declared local emergency.

The COVID-19 local emergency declaration was terminated by the City Council on March 7, 2023. As a result, the notarization requirement of APP No. 2.6.02(D)(3)-(4) went back into effect on March 7, 2023. However, the pandemic-era policy of not requiring notarization beyond the requirements of applicable state and federal law was more efficient and helped streamline the procurement process. Notarization of consultants'/vendors' signatures on contracts for purchase of goods and services is generally not required by state law. Therefore, staff desires to permanently dispense with this notarization requirement. Adoption of the proposed resolution, together with a subsequent City Manager-approved amendment to APP No. 2.6.02, would do so.

II. RECOMMENDATION

1. ADOPT Resolution No 23-170, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, REPEALING RESOLUTION NO. 21-119 AND

REQUIRING ONLY COMPLIANCE WITH APPLICABLE STATE AND FEDERAL LAW REGARDING NOTARIZATION OF ELECTRONIC AND DIGITAL SIGNATURES FOR CITY CONTRACTS.”

III. ALTERNATIVES

TAKE another action the Council deems appropriate, subject to applicable law.

IV. BACKGROUND

“Electronic signature” is defined in state law, the Uniform Electronic Transactions Act (UETA), as “an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with intent to sign the electronic record.” “Digital signature” is a type of electronic signature, and is defined 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 or “wet” signature.”

Government agencies may use and accept all types of electronic signatures, including digital signatures, in accordance with the UETA. The benefits of electronic signatures include, but are not limited to, reductions in the use of paper, time, and costs associated with transmitting, approving, and executing physical documents.

Pursuant to Government Code Section 16.5, government agencies may elect to use digital signatures and may accept a digital signature from another party, for any written communications with the City in which a signature is required or used. Government Code Section 16.5 provides criteria that, if complied with, will ensure the validity of a digital signature used by a public entity in a written communication with another party. The California Secretary of State has also issued regulations regarding the use of digital signatures by public entities, set forth in Title 2, Division 7, Chapter 10 (Digital Signatures) of the California Code of Regulations.

Resolution No. 21-119 was adopted in 2021 and arguably went into effect when the COVID -19 local emergency was terminated. Per Resolution No. 21-119, if electronic signatures are used for a City contract, such signatures must be notarized unless they constitute digital signatures meeting the criteria set forth in Government Code Section 16.5(a).

However, this requirement proved infeasible and would be removed pursuant to the proposed Resolution No. 23-170, which would repeal Resolution No. 21-119 and instead provide as follows:

- Except as otherwise required by applicable law, the use and acceptance of electronic signatures not otherwise qualifying as digital signatures, for entering into and executing City contracts is hereby authorized, and the electronic signature shall have the same force and effect as the use of a “wet” or manual signature, provided that if required by applicable state or federal law, such signature shall be duly notarized, and further provided that the contracting parties mutually agree to use and accept electronic

signature.

- Except as otherwise required by applicable law, the use and acceptance of digital signatures for entering into and executing City contracts is hereby authorized, provided that the contracting parties mutually agree to use and accept digital signatures, and further provided that the digital signatures comply with applicable requirements of Government Code Section 16.5. If the City elects to use a digital signature, it shall have the same force and effect as the use of a “wet” or manual signature if it embodies all of the attributes as required by Government Code Section 16.5. Except as otherwise required by applicable state or federal law, digital signatures used in accordance with these provisions shall not require notary acknowledgment.

The proposed resolution would enable to the City Manager to amend APP No. 2.6.02 subsection (D), subparagraphs (3)-(4) as follows with respect to vendor execution of City procurement contracts (additions shown in **bold italics**, deletions in ~~strikethrough~~):

“3. The City Project Manager shall have the vendor execute two **originals** copies of the contract **unless electronic or digital signatures are permitted for the contract in which case the signatures need not be originals** with a notary.

4. The Project Manager must submit the following documents to the City Clerk’s Office for contract execution:

- a. The original copies of vendor-signed contract **unless electronic or digital signatures are permitted for the contract in which case the signatures need not be originals** with original notary certificate(s);
- b. All certificates of insurance and insurance policy endorsement forms required by the contract and approved by the City’s Risk Manager;
- c. Reference to the City Council agenda report, if applicable; and
- d. Any related contracts **and amendments** if a contract amendment is being submitted for execution.”

With adoption of the proposed resolution and the contemplated changes to the APP that would subsequently be made by City Manager approval as shown above, the net effect would be that moving forward, electronic signatures used on City contracts would only need to be notarized when notarization is required by applicable state or federal law, and procurement contracts (whether signed with original or electronic signatures) would not need to be notarized except where required by applicable state or federal law.

V. FISCAL IMPACT

None.

VI. EXHIBITS

1. Proposed Resolution No. 23-170

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