



Legislation Details (With Text)

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Title: CONSIDER ADOPTING RESOLUTION NO. 21-119 AUTHORIZING THE USE OF DIGITAL SIGNATURES AND NOTARIZED ELECTRONIC SIGNATURES FOR CITY CONTRACTS (CITY COUNCIL)
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Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, September 07, 2021

Consent

SUBJECT:

CONSIDER ADOPTING RESOLUTION NO. 21-119 AUTHORIZING THE USE OF DIGITAL SIGNATURES AND NOTARIZED ELECTRONIC SIGNATURES FOR CITY CONTRACTS (CITY COUNCIL)

I. SUMMARY

The City Council is being asked to adopt Resolution No. 21-119, which will allow City contracts to be executed electronically and sometimes, digitally provided certain requirements are satisfied. The terms “digital signature” and “facsimile signature” are types of “electronic signatures.” The City Council has already approved a contract with Docusign for providing the software that facilitates the use of electronic signatures. That contract has been fully executed and staff has been in the process of implementing use of the software by training the appropriate staff members and generally addressing Department organizational matters in anticipation of its use. Use of electronic signatures will increase the speed and operational efficiency of the City’s contracting process.

Except as otherwise prohibited by law and so long as the contracting parties mutually agree, adoption of Resolution No. 21-119 would allow City contracts to be executed “electronically” provided the contracts are duly notarized. However, digital signatures would not need to be notarized due to the inherent signature verification technology utilized for

such signatures.

Resolution No. 21-119 would go into effect immediately upon rescission of City Council Resolution No. 20-053 provided that the local COVID-19 emergency declared under such Resolution will have been lifted. This is because Resolution No. 20-053 and the Disaster Council's actions taken subsequent to its adoption have waived all notary and original signature requirements on City contracts thereby rendering the current allowances more permissive than what will be allowed under Resolution No. 21-119.

II. RECOMMENDATION

WAIVE further reading and APPROVE Resolution No. 21-119 entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AUTHORIZING THE USE OF DIGITAL SIGNATURES AND NOTARIZED ELECTRONIC SIGNATURES FOR CITY CONTRACTS"

III. ALTERNATIVES

Take another action the City Council deems appropriate.

IV. BACKGROUND

The City Council is being asked to adopt Resolution No. 21-119, which will allow City contracts to be executed electronically and sometimes, digitally provided certain requirements are satisfied. The term "digital signature" is a type of "electronic signature" under applicable law and "facsimile signature" is treated as being the same as an electronic signature under the proposed resolution. A "facsimile signature" means the reproduction by engraving, imprinting, stamping, or other means of an original signature, created, without limitation, when a document is copied on a copy machine, scanned, or when it is transmitted via a facsimile (fax) machine.

Except where original signatures are required by law (e.g., the creation of wills, codicils, testamentary trusts, and real estate conveyance instruments), government agencies may use and accept all types of electronic signatures, including digital signatures, when entering into contracts so long as all contracting parties mutually agree to use and accept them. This means the contracts would need to include a provision for their allowance, similar to the sample below:

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, whether the signatures are originals, electronic, facsimiles or digital. All such counterparts shall together constitute but one and the same Agreement.

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. An "electronic signature" is defined under the Uniform Electronic Transactions

Act (“UETA”) (California Civil Code §§1633.1 et seq.), 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.” The term “digital signature” is defined under Government Code Section 16.5 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.”

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 use of a digital signature in a communication between a governmental agency and another party. The California Secretary of State has also issued regulations regarding the use of digital signatures, set forth in Title 2, Division 7, Chapter 10 (Digital Signatures) of the California Code of Regulations. By use of certain approved technology, the protections of utilizing digital signatures that verify the authenticity of the signatory render notary acknowledgements redundant. A digital signature meets all of the following requirements:

1. It is unique to the person using it;
2. It is capable of verification;
3. It is under the sole control of the person using it;
4. It is linked to data in such a manner that if the data are changed after the digital signature is affixed, the digital signature is invalidated; and
5. It conforms to the Secretary of State Regulations in that it is created by a technology that is acceptable for use by the State of California.

Adoption of Resolution No. 21-119 would authorize the use and acceptance of electronic signatures not otherwise qualifying as digital signatures, for the sole purpose of execution of City of Carson (“City”) contracts, provided such signatures are duly acknowledged by certified notaries. Additionally, it would authorize the use and acceptance of digital signatures for the sole purpose of execution of City contracts, without the need for such signatures to be duly acknowledged by certified notaries.

Resolution No. 21-119 would not take effect immediately. As the City Council may be aware, on March 17, 2020, by adoption of Resolution No. 20-053, the City Council declared the existence of a local emergency due to the onset of the worldwide COVID-19 pandemic. Between March 2020 and April 2020, the City’s Disaster Council approved waiver of notary requirements for all City contracts, approved suspension of the need for original signatures on contracts, and approved electronic signatures, at least until the local emergency is formally declared to have passed and Resolution No. 20-053 is rescinded by the City Council. Because the allowances under Resolution No. 20-053 are more permissive than the approvals to be provided under Resolution No. 21-119, this Resolution No. 21-119 will go into effect immediately upon rescission of Resolution No. 20-053 provided that the local COVID-19 emergency declared under such Resolution will have been lifted.

V. FISCAL IMPACT

There is no known fiscal impact at this time beyond those associated with staff's increased efficiency in processing contracts.

VI. EXHIBITS

1. Resolution No. 21-119

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