



CITY OF SALINAS COUNCIL STAFF REPORT

DATE: July 11, 2017

DEPARTMENT: CITY ATTORNEY'S OFFICE

FROM: Christopher A. Callihan, City Attorney
Patricia M. Barajas, City Clerk

TITLE: ORDINANCE RELATING TO ELECTRONIC RECORDS AND USE
OF ELECTRONIC SIGNATURES

RECOMMENDED MOTION:

A motion to adopt an Ordinance authorizing electronic signatures on documents used and accepted by the City of Salinas.

RECOMMENDATION:

It is recommended that the City Council adopt the proposed Ordinance regarding the use and the acceptance of electronic signatures.

EXECUTIVE SUMMARY:

The proposed Ordinance would add Article VII to Chapter 1 of the Salinas City Code. The City continues to improve its businesses processes and practices, making them more modern, efficient, and customer-service oriented. Allowing for the use of electronic signatures is consistent with the City's ongoing improvement to its business processes and practices and will increase the efficiency of service delivery. The use of electronic signatures has become increasingly common. Using electronic signatures on planning and building-related documents, for example, will be more effective and provide a better customer experience. In addition, allowing for the electronic signature of City agreements will improve efficiency and ideally lead to a better management of records.

BACKGROUND:

An electronic signature is an electronic symbol that represents an individual's acceptance or adoption of a statement or transaction and can be as simple as typing a name or checking a box. State law has recognized the use of electronic signatures and digital signatures for a number of years. In 1999, California adopted the Uniform Electronic Transactions Act (California Civil Code Sections 1633.1-1633.17) guaranteeing that electronic signatures would have the same effect as a "wet" or a manual signature.

An “electronic signature” is defined under the Act 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.” Electronic also means to sign documents with a digital signature as long as they comply with strict verification procedures established by the Secretary of State (Government Code Section 16.5). The Secretary of State’s regulations have not been updated since 1998 and the two methods by which digital signatures can be verified (public key cryptography (PK) signature dynamics) add complexity and expense to the signature process, eliminating some of the primary advantages of using electronic signatures.

If public key cryptography is used to create digital signatures, the signer must be capable of being issued a certificate to certify that he or she controls the key pair used to create the signature. Public entities may only accept certificates from Certification Authorities that appear on the Secretary of State’s “Approved List of Certification Authorities.” And, when digital signatures are used, the City must also follow the following procedures: (1) prior to accepting a digital signature, the City must ensure that the level of security used to identify the signer of a document and to transmit the signature, are sufficient for the transaction being conducted, and (2) if a certificate is a required component of a digital signature transaction, the City must also ensure that the certificate format used by the signer is sufficient for the security and the interoperability needs of the City. Nonetheless, the proposed Ordinance allows for the use of digital signatures and Salinas, as a Charter city, has authority for proscribing the procedures and the requirements for entering into purchase requirements and can, therefore, proscribe different technologies which provide at least the level of security required by the Secretary of State. The proposed Ordinance includes a provision to allow the City to deviate from the Secretary of State’s requirements, as determined necessary and consistent with at least the minimum requirements.

CEQA CONSIDERATION:

The City Council’s consideration and adoption of the proposed Ordinance is not a project subject to environmental review under the California Environmental Quality Act (CEQA) because it involves only general policy and procedure-making and does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. [CEQA Guidelines Sections 15002(d), 15378, 15061(b)(3)].

STRATEGIC PLAN INITIATIVE:

Approving the proposed Ordinance is consistent with the City Council’s goal of an effective, sustainable government.

FISCAL AND SUSTAINABILITY IMPACT:

No impact to the City’s General Fund is anticipated with the recommended actions.

ATTACHMENTS:

Ordinance

ORDINANCE NO. _____ (N.C.S.)

AN ORDINANCE ADDING ARTICLE VII OF CHAPTER 1 OF THE SALINAS CITY CODE RELATING TO ELECTRONIC RECORDS AND THE USE OF ELECTRONIC SIGNATURES ON DOCUMENTS ACCEPTED BY THE CITY OF SALINAS

City Attorney Analysis

State law has, for some time, recognized the use of electronic signatures and digital signatures. The proposed Ordinance would amend the City Code to authorize the use of electronic signatures and digital signatures on City documents. While the Secretary of State has promulgated specific regulations for the use of digital signatures, Salinas, as a Charter city, may allow for the use of different technologies.

SECTION 1. Article VII is added to Chapter 1 of the City Code and shall read as follows:

Article VII. Electronic Records and Signatures.

Sec. 1-07.01. Findings.

- (a) Electronic signature technology allows the City of Salinas to collect and to preserve signatures on documents quickly, securely, and efficiently.
- (b) The conditions under which the City of Salinas will accept electronic signatures on documents are a municipal affair within the purview of the City Council to regulate in accordance with the Salinas Charter.

Sec. 1-07.02. Electronic Records and Electronic Signatures.

- (a) In any document used or accepted by the City in which a signature is required, the City shall not deny the force and effect of an electronic signature if:
 - (1) The identity of the person using the electronic signature is capable of verification; and
 - (2) The signature is linked to the document in such a manner that it is readily ascertainable if the document is changed after the signature is applied.
- (b) This section is intended to enable the City to use electronic records, electronic signatures, and digital signatures to the fullest extent allowed by law, and does not limit the City's ability to use electronic records, electronic signatures, or digital signatures in any way.
- (c) When a record is required to be in writing, an electronic record satisfies that requirement, if it is in accordance with the Uniform Electronic Transactions Act, as the same may be amended from time-to-time.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held invalid by a court of competent jurisdiction, such a decision shall

not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases, be declared invalid.

SECTION 3. EFFECTIVE DATE. This Ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this 11th day of July, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk

APPROVED AS TO FORM:

Christopher A. Callihan, City Attorney