

**Meeting Date:** 10/27/2015

**Report Type:** Consent

**Report ID:** 2015-00911

**Title: Ordinance Adding Section 1.04.110 of the Sacramento City Code to Include Electronic Records and Signatures (Passed for Publication 10/20/2015; Published 10/23/2015)**

**Location:** Citywide

**Recommendation:** Pass an Ordinance adding Section 1.04.110 of the Sacramento City Code to Include Electronic Records and Signatures.

**Contact:** Shirley Concolino, MMC, City Clerk, (916) 808-5442, Office of the City Clerk

**Presenter:** None

**Department:** City Clerk

**Division:** City Clerk

**Dept ID:** 04001011

**Attachments:**

1-Description/Analysis

2-Proposed Ordinance

3-CA Opinion-Electronic-Digital Signature

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**City Attorney Review**

Approved as to Form

Steve Itagaki

10/20/2015 3:56:55 PM

**Approvals/Acknowledgements**

Department Director or Designee: Shirley Concolino - 10/19/2015 12:22:39 PM

## Description/Analysis

**Issue Detail:** The Ordinance adding Section 1.04.110 to the Sacramento City Code relating to the use of electronic records and signatures in accordance with California state law, is necessary before digital signatures are used in the execution of City business.

**Policy Considerations:** The use of digital signatures citywide will enable “digital to digital” processes increasing customer service, enhancing records management best practices and providing benchmark data for performance measurements leading to good management decisions.

**Economic Impacts:** Providing additional efficiencies in the building/planning processes will provide a more effective interaction with the business community could enhance the City’s economic development.

**Environmental Considerations:** This action is not a project subject to 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, §§ 15002(d), 15378, 15061(b)(3).)

**Sustainability:** The use of digital signatures will reduce paper document creation by enabling digital to digital processes. The reduction in the use of paper supports the City’s goal for Sustainability.

**Rationale for Recommendation:** It is necessary to update the Sacramento City Code before implementation of the proposed digital signature application.

Over the past several years, the City has invested in, and continues to improve, citywide business processes. The City Council recently approved the Automated Bids, Contracts, and Digital Signatures Program.

Along with City contract execution, incorporating digital signatures into other citywide processes will be beneficial by increasing the efficiency of service delivery. Using digital signatures for building permitting, plan approvals, City code exemptions and home occupancy permits will be more effective and provide a better customer experience. Digitally signing human resource documents and finance documents, in addition to contracts, will improve efficiency as well as provide better management of records. It is likely that other citywide business processes will be candidates for the use of digital signatures as well.

**Commission/Committee Action:** The Law and Legislation Committee reviewed and forwarded the Ordinance to the Council for adoption on October 13, 2015.

**Financial Considerations:** N/A

Local Business Enterprise (LBE): N/A

**ORDINANCE NO.**

Adopted by the Sacramento City Council

Date Adopted

**AN ORDINANCE ADDING SECTION 1.04.110 TO THE  
SACRAMENTO CITY CODE RELATING TO ELECTRONIC  
RECORDS AND SIGNATURES**

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 1.04.110 is added to the Sacramento City Code to read as follows:

**1.04.110 Electronic records and signatures.**

A. The following definitions apply to this section:

1. "Electronic record" has the same meaning as in section 1633.2 of the California Civil Code.

2. "Electronic signature" has the same meaning as in section 1633.2 of the California Civil Code.

3. "Digital signature" has the same meaning as in section 16.5 of the California Government Code.

4. "UETA" means the Uniform Electronic Transactions Act, commencing at section 1633.1 of the California Civil Code.

B. In any transaction or communication with the city for which the parties have agreed to conduct the transaction or communication by electronic means, the following provisions apply:

1. When a record is required to be in writing, an electronic record satisfies that requirement, if it is in accordance with the UETA.

2. When a signature is required, the parties may agree that either:

a. An electronic signature satisfies that requirement, if it is in accordance with the UETA; or

b. A digital signature satisfies that requirement, if it is in accordance with section 16.5 of the California Government Code.

C. 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.

**MEMORANDUM**

**DATE:** August 24, 2015

**TO:** Mayor & Councilmembers

**FROM:** James Sanchez, City Attorney  
Matthew Ruyak, Supervising Deputy City Attorney  
**Steven Itagaki, Senior Deputy City Attorney** *SM*

**SUBJECT: Electronic and Digital Signatures**  
**Matter ID: 14-7311**  
Document No.: 459467

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**ISSUES PRESENTED**

- I. What types of electronic means can the City use to legally sign or execute documents?
- II. If the City elects to use digital signatures, what kinds of signatures can it use?

**SHORT ANSWER**

- I. Electronic signatures and digital signatures. But all parties must agree to use them.
- II. If the City elects to use digital signatures, they must be created with either (1) public key cryptography technology with the capability of issuing certificates from approved certificate authorities, or (2) signature dynamics technology.

**ANALYSIS**

**I. What types of electronic means can the City use to legally sign or execute documents?**

Generally, there are two types of electronic means recognized by state law that the City can use to legally sign or execute documents: electronic signatures and digital signatures.

California's Uniform Electronic Transactions Act provides, "If a law requires a signature, an electronic signature satisfies the law."<sup>1</sup> "Electronic signature" is defined in the UETA as "an electronic sound, symbol, or process attached to or logically associated with an electronic record

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<sup>1</sup> Cal. Civ. Code § 1633.7(d).

and executed or adopted by a person with the intent to sign the electronic record.”<sup>2</sup> This is the simpler of the two types of electronic means to sign documents. Depending on the circumstances, an electronic signature could include a person’s name or initials typed at the end of an email.<sup>3</sup>

The other type of electronic means to sign documents is a digital signature. The California Government Code provides, “In any written communication with a public entity . . . in which a signature is required or used, any party to the communication may affix a signature by use of a digital signature that complies with the requirements of this section.”<sup>4</sup> The Government Code 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.” (Cal. Civ. Code § 16.5(d).) A valid digital signature must also embody the following attributes:

- (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, the digital signature is invalidated.
- (5) It conforms to regulations adopted by the Secretary of State. . . .<sup>5</sup>

If a digital signature meets all of those characteristics the Government Code provides, “the use of a digital signature shall have the same force and effect as the use of a manual signature.”<sup>6</sup>

Nevertheless, neither option is required nor must be accepted by the City in any transaction. The UETA specifies that its electronic signature provisions apply “only to a transaction between parties each of which has agreed to conduct the transaction by electronic means.”<sup>7</sup> Likewise, the Government Code states that the use of digital signatures is “at the option of the parties.”<sup>8</sup>

## **II. If the City elects to use digital signatures, what requirements must be met?**

If the City elects to use digital signatures, the technology that creates the signature must be acceptable for use by the State of California.<sup>9</sup> At this time, there are two acceptable technologies: (1) public key cryptography, and (2) signature dynamics.<sup>10</sup>

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<sup>2</sup> Cal. Civ. Code § 1633.2(h).

<sup>3</sup> *Cf. J.B.B. Investment Partners, Ltd. v. Fair* (2014) 232 Cal.App.4th 974, 988-989 [printed name at end of e-mail; but not an electronic signature because of no intent to execute transaction]; *Ni v. Slocum* (2011) 196 Cal.App.4th 1636 [signature on initiative petition traced on screen of smartphone; but section 100 of the Elections Code is exempt]. )

<sup>4</sup> Cal. Gov. Code § 16.5(a).

<sup>5</sup> Cal. Gov. Code § 16.5(a); 2 Cal. Code Regs. 22002.

<sup>6</sup> Cal. Civ. Code § 16.5(a).

<sup>7</sup> Cal. Civ. Code § 1633.5(b).

<sup>8</sup> Cal. Gov. Code § 16.5(b).

<sup>9</sup> 2 Cal. Code Regs. § 22001.

<sup>10</sup> 2 Cal. Code Regs. § 22003; see regulations for the specific requirements of these technologies.

If public key cryptography technology is used to create the 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.<sup>11</sup> Public entities may only accept certificates from Certification Authorities that appear on the Secretary of State's "Approved List of Certification Authorities."<sup>12</sup>

Finally, 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 interoperability needs of the City.<sup>13</sup>

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<sup>11</sup> 2 Cal. Code Regs. § 22003(a)(2)(C).

<sup>12</sup> 2 Cal. Code Regs. § 22003(a)(6)(B); the approved list may be found at the following URL: <http://www.sos.ca.gov/administration/regulations/current-regulations/technology/digital-signatures/approved-certification-authorities>.

<sup>13</sup> 2 Cal. Code Regs. § 22005.

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