

ORDINANCE NO. 1745

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA AMENDING ARTICLE II OF CHAPTER 2 OF THE FONTANA MUNICIPAL CODE REGARDING ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.

WHEREAS, the City of Fontana, California (the "City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, pursuant to Article II of Chapter 2 of the Fontana Municipal Code, the City regulates the administration of the business of the City through and on behalf of the City Council of the City of Fontana (the "City Council"); and

WHEREAS, in 1999, California adopted a version of the Uniform Electronic Transactions Act (UETA) in Civil Code sections 1633.1-1633.17, giving electronic signatures the same legal effect as manual or "wet" signatures; and

WHEREAS, in 2000, the United States Congress passed the Electronic Signatures in Global and National Commerce Act (E-SIGN Act), mandating the same treatment of electronic signatures and manual signatures in interstate or foreign commerce (15 U.S.C. 7001); and

WHEREAS, in 1995, before the UETA or the E-SIGN Act, California passed Government Code section 16.5, authorizing public entities to accept "digital signatures" if they complied with stringent verification procedures that involve advanced technologies and likely would be overly burdensome for many individuals and groups that have only occasional interaction with the City. The Secretary of State adopted digital signature regulations in 1998, but these regulations have not been updated in almost 20 years (2 C.C.R. 22000 et seq.); and

WHEREAS, Government Code section 16.5 and the Secretary of State's regulations set requirements for the use of digital signatures, they do not govern or limit the City's ability to use or accept electronic signatures as a municipal affair; and

WHEREAS, the use of electronic signatures on legally binding documents has become increasingly prevalent in the private sector but has not yet become widespread among public agencies; and

WHEREAS, the benefits of electronic signatures include, but are not limited to, reductions in the paper, time and costs associated with transmitting, approving and executing physical documents; and

WHEREAS, an electronic signature is an electronic symbol affixed to a document that represents an individual's acceptance or adoption of a statement or transaction; and

WHEREAS, electronic signature technologies have developed to address concerns with verifying the identity of the person affixing his or her electronic signature; and

WHEREAS, the proposed Ordinance would provide assurance that electronic signatures meeting certain security criteria would be effective on documents created or accepted by the City, notwithstanding the fact that they do not involve the advanced technologies required in the Secretary of State's digital signature regulations; and

WHEREAS, the proposed Ordinance would enable the City to use electronic signatures on electronic records provided the electronic signature is in accordance with the UETA; and

WHEREAS, the proposed Ordinance would codify the City's policy on electronic signatures and delegation of electronic signature authority, while enabling the City Manager to adopt additional policies and procedures to operationalize the use of electronic signatures; and

WHEREAS, the City Council finds that the use of electronic signatures will allow the City to collect and preserve signatures on documents quickly and security, will improve efficiency while saving costs of transmitting documents, and will provide for better management of City records; and

WHEREAS, the City Council finds that the use of electronic signatures will reduce paper document creation will support the City's goal of sustainability; and

WHEREAS, the City Council determines that the City should embrace the benefits of electronic signatures by codifying a City policy on electronic signatures and further defining the City's use of electronic signatures in an Administrative Policy and accompanying Procedure; and

WHEREAS, the City Council desires to amend Article II of Chapter 2 of the Fontana Municipal Code to add a new Section 2-43 addressing the use of electronic signatures at the City; and

WHEREAS, the City Council further desires to amend Section 2-44 of Article II of Chapter 2 of the Fontana Municipal Code to allow contracts and other documents executed by the Mayor, the City Manager, a City Council member, or a City employee, whether or not signed electronically, to be attested by the Deputy City Clerk or the City Clerk; and

WHEREAS, all other legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Section 2-43 is hereby added to Article II of Chapter 2 of the Fontana Municipal Code to read in its entirety as follows:

"Sec. 2-43. - Electronic signatures and electronic records.

- (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. All use of electronic records, electronic signatures, and digital signatures by the city shall be in accordance with city administrative policies and procedures, as may be designated and amended from time to time by the city manager or his or her designee.
- (d) Any use of electronic records, electronic signatures, and digital signatures by the city that is not in accordance with this section and city administrative policies and procedures, or any unauthorized signing of any contract, record, or other document, shall render such contract, record, or other document invalid as not fully and properly executed by the city.
- (e) Authority to sign or execute contracts, records, or other documents via electronic signatures or digital signatures may be delegated by the city manager or other city department heads to designated city staff members. The act of delegation of electronic signature authority by the city manager or other city department head must be memorialized in writing, including, but not limited to, memorandum, city form, e-mail, or delegation process recorded within electronic signature software."

Section 3. Section 2-44 of Article II of Chapter 2 of the Fontana Municipal Code is hereby amended to read in its entirety as follows:

"Sec. 2-44. - Enforceability of city contracts and agreements executed by the mayor and city council designees.

- (a) This section 2-44 applies to any contract or agreement ("contract") imposing a financial liability or obligation upon the city, or subjecting the city to any form of equitable relief. No contract shall be effective unless authorized by vote of the city council or by this section.
- (b) In accordance with California Government Code Section 40602, the mayor shall execute all contracts made or entered into by the city, unless another city officer or employee is otherwise authorized to execute such contract pursuant to this code or ordinance adopted by the city council. The city manager is hereby authorized to sign the following types of contracts made or entered into by the city:
 - (1) Contracts for goods or services less than or equal to an amount established from time-to-time by resolution of the city council;

- (2) Contracts approved by resolution or minute order of the city council;
- (3) Settlement agreement contracts approved by the city council; and
- (4) Contracts concerning the administrative business of the city which the city manager has direction and control over pursuant to:
 - a. His or her contract with the city;
 - b. This Code; or
 - c. An ordinance of the city council.
- (c) All contracts executed by the mayor, city manager or other city council officer or employee of the city shall be attested to by the city clerk or deputy city clerk as required by state and federal law and city administrative policy.
- (d) No person other than the mayor, the city manager or other person expressly authorized by this section or other provision of this Code may bind the city. Any purported contract not executed in conformity with this section or other provision of this Code is void and shall not be the subject of implied ratification or estoppel, unless expressly ratified by resolution duly adopted by the city council.”

Section 4. CEQA. This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is nonetheless exempt from the requirements of CEQA in that the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

Section 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which this Ordinance is based are located at the

City Clerk's office located at 8353 Sierra Avenue, Fontana, CA 92335. The custodian of these records is the City Clerk.

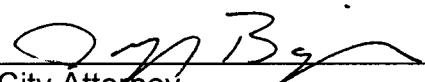
Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The people of the City of Fontana hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 7. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

Section 8. Publication. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Fontana.

APPROVED AND ADOPTED 26th day of July 2016.

READ AND APPROVED AS TO LEGAL FORM:



City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted by the City Council and was introduced at a regular meeting on the 12th day of July, 2016, and was finally passed and adopted not less than five days thereafter on the 26th day of July, 2016, by the following vote to wit:

AYES: Mayor Warren, Mayor Pro Tem Salazar-Wibert, Council Members Roberts and Sandoval

NOES:


ABSENT: Council Member Tahan

ABSTAIN:

Ordinance No. 1745



City Clerk of the City of Fontana



Mayor of the City of Fontana

ATTEST:



City Clerk