

**CITY OF CARMEL-BY-THE-SEA
CITY COUNCIL**

RESOLUTION NO. 2020-048

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA
ESTABLISHING AN ELECTRONIC SIGNATURE POLICY**

WHEREAS, the use of electronic signatures on legally-binding documents has become increasingly prevalent; and

WHEREAS, the City's current document signature process entails routing physical documents to signors and can be streamlined through the implementation of an electronic signature process; and

WHEREAS, the benefits of using electronic signatures in lieu of handwritten signatures include: reduction of paper generation, and decrease in time associated with transmitting, approving and retaining physical documents; and

WHEREAS, the adoption of an Electronic Signature Policy would authorize the City to accept an approved "digital signature," a type of electronic signature that has the same force and effect as a manual signature, in lieu of a written signature, on a document in which a signature is required or used.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY
OF CARMEL-BY-THE-SEA DOES HEREBY:**

Authorize the use of digital signatures and establishes the Electronic Signature Policy provided in Attachment A.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-
THE-SEA this 4th day of August, 2020, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Britt Avrit, MMC
City Clerk

**ATTACHMENT A
CITY OF CARMEL-BY-THE-SEA
POLICY AND PROCEDURE**

Subject: Electronic Signature Policy	Policy/Procedure No:
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Effective Date: 8/4/2020	Authority: Resolution 2020-048
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Purpose:

The use of electronic signatures on legally-binding documents has become increasingly prevalent in the private and public sectors. The benefits of using electronic signatures in lieu of handwritten signatures include: reduction of paper generation; significant decrease in time and cost associated with transmitting, approving, and retaining physical documents; and the creation of an audit trail of the modification, editing, and approval/signing of documents.

Policy/Procedure:

It is the policy of the City of Carmel-by-the-Sea ("City") to encourage the use of electronic signatures in internal and external activities, documents, and transactions when it is operationally feasible, where technology permits, and when it is otherwise appropriate in the discretion of the City Administrator, in accordance with the provisions that follow (the "Policy").

This Policy authorizes the City to accept and approve electronic signatures, in lieu of written signatures, on documents requiring signatures, in compliance with the legal requirements of California Government Code section 16.5, California Civil Code section 1633.1 et. seq. (the California Uniform Electronic Transaction Act, "UETA"), 15 United States Code Annotated 7001 (the United States Electronic Signatures in Global and National Commerce Act, "ESIGN Act"), and all other applicable laws and regulations. The parties to a transaction must agree to conduct the transaction by electronic means using a City-approved signature method that complies with applicable laws and regulations, including the capability of all parties to retain and accurately reproduce the electronically signed document or record.

This Policy does not supersede any laws that specifically require a written signature on a particular document for the same to be considered legally valid. This Policy does not limit the right of any party to a contract to conduct a transaction on paper or in non-electronic form, and/or the right of any party to a contract to have documents provided in paper or non-electronic form.

Legal Requirements

Under the UETA and the ESIGN Act, an electronic signature will be legally valid and recognized if it satisfies the following requirements:

1. Intent to sign - Electronic signatures, like traditional, handwritten signatures, are valid only if each party intended to sign.
2. Consent to do business electronically - The parties to the transaction must consent to do business electronically. Electronic records may be used in transaction with consumers only when the consumer has:
 - Received UETA Consumer Consent Disclosures
 - Affirmatively agreed to use electronic records for the transaction
 - Has not withdrawn such consent
3. Association of signature with the record - In order to qualify as an electronic signature under the ESIGN Act and UETA, the system used to capture the transaction must keep an associated record that reflects the process by which the signature was created, or generate a textual or graphic statement (which is added to the signed record) proving that it was executed with an electronic signature.
4. Record retention - U.S. laws on electronic signatures and transactions require that electronic signature records be capable of retention and accurate reproduction for reference by all parties or persons entitled to retain the contact or record.

Under the UETA, electronic document signers may elect to use an 'electronic signature' or a 'digital signature.' An 'electronic signature' is "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." (Cal. Civ. Code § 1633.2.) A 'digital signature' is "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. Gov. Code § 16.5.) A 'digital signature' is a type of electronic signature. (*Id.*) Digital signatures appear to be more widely accepted as alternatives to written signatures.

Should a signer elect to use a 'digital signature' rather than an electronic signature, the signature must embody all of the following attributes in order to have the same force and effect as a manual signature:

- (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; and
- (5) It conforms to regulations adopted by the Secretary of State.

References

Cal. Gov. Code § 16.5; California Civil Code § 1633.1 et. seq (UETA); 15 U.S.C.A. § 7001 (ESIGN Act).

Procedure

1. In any document accepted by the City in which a signature is required or used, the City may authorize the use of an electronic signature, so long as it complies with the requirements of this section.
2. To the fullest extent permitted by law, the City accepts electronic signatures as legally binding and equivalent to handwritten signatures to signify an agreement.
3. The City's right or option to conduct a transaction on paper or in non-electronic form shall not affect the City's right, option or obligation to have documents provided or made available in paper format.
4. Where a legal requirement, beyond City policy, requires a written document, that requirement is met when an electronic record has associated with it an electronic signature using an approved electronic signature method, which complies with applicable state law.
5. This Policy applies only to transactions between parties, which have agreed to conduct transactions by electronic means with the use of the City's approved electronic signature method.
6. This Policy shall not apply to any transaction that requires a person's signature to be signed in the presence of a notary public.
7. Prohibited Uses of Electronic Signatures:
Use of electronic signatures is prohibited in the following situations:
 - Transactions for which electronic signatures are not enforceable by law and/or transactions requiring a handwritten signature, such as transfers of real property.
 - Transactions that require a person to sign in the presence of a notary public.

Responsible Parties:

Responsibilities are as follows:

1. The City Administrator and City Clerk, in consultation with the City Attorney, shall have the authority to develop administrative policies and procedures to the extent necessary to implement the terms of this Policy.
2. The City Administrator, or his/her designee in consultation with the City Attorney, shall determine acceptable technologies and vendors consistent with industry best practices to ensure the security and integrity of the data and the signature. The final approval of any electronic signature method will be made by the City Administrator and City Attorney.
3. The City Administrator, or his/her designee in consultation with the City Attorney, shall further determine the documents for which the City will accept electronic signatures. Periodic reviews will be implemented for appropriateness and continued applicability of electronic signatures.

4. If it is determined that an approved electronic signature method is no longer trustworthy, the City Administrator, or his/her designee must revoke the approval of that electronic signature method. If there is continued significance for the electronic signatures, which used the revoked method, the City Administrator, or his/her designee will take steps to see that any valid records signed with the revoked electronic signature method are signed again either with a written signature or with an approved electronic signature method.

Department of Origin:

Administration

Revision Dates:

Rescinded Date: