



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** COUNTY MANAGER

**File #:** 21-997

Board Meeting Date: 12/14/2021

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**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors  
**From:** Michael P. Callagy, County Manager/Clerk of the Board  
**Subject:** Resolution Authorizing Electronic Signatures for Board Resolutions

### **RECOMMENDATION:**

Adopt a resolution authorizing the use of electronic signatures in connection with adoption of resolutions by the Board of Supervisors.

### **BACKGROUND:**

County staff seeks to automate and expedite document approval processes involving the Board of Supervisors (Board) to explicitly permit the use of electronic and/or digital signatures such as, without limitation, DocuSign, to certify adoption of resolutions, including Appropriation Transfer Requests.

Under California law, "Electronic signature" means 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. (Civil Code § 1633.2(h).) Electronic signature shall include facsimile signatures created using an electronic means, such as an electronic pad, tablet computer, or similar device.

California law further defines "Digital signature" to mean a type of electronic signature that consists of 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, that embodies the following attributes:

- It is unique to the person using it;
  - It is capable of verification;
  - It is under the sole control of the person using it;
  - It is linked to data in such a manner that if the data are changed, the digital signature is invalidated; and
  - It conforms to regulations adopted by the Secretary of State as set forth at 2 CCR § 20000.
- See Govt. Code § 16.5.

### **DISCUSSION:**

This resolution presented to this Board confirms the Board's legal authority to certify adoption of resolutions with electronic signatures in lieu of manual or "wet" signatures. Specifically, the resolution is to confirm the Board's authority to use electronic signatures entered into a computer by an authorized person with the intent to show authorship or to sign a record for approval, acceptance, or certification in connection with adoption of resolutions by this Board, provided that the electronic signature is unique to the person using it; capable of verification; under the sole control of the person using it; is linked to data in such a manner that if the data are changed, the digital signature is invalidated; and it conforms to regulations adopted by the California Secretary of State at 2 CCR § 20000.

There is ample legal authority supporting the use of electronic signatures in connection with the adoption of Board resolutions.

First, use of electronic signatures is permitted by public entities under both the Uniform Electronics Act ("UETA") and under Government Code § 16.5 ("Digital Signatures"). "Electronic signature" under the UETA "means 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" (Civ. Code § 1633.2(h)). Government Code § 16.5 applies only to public entities and permits use of "digital signatures," which is a kind of electronic signature. "Digital signature" under Government Code § 16.5 "means 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." Gov't Code § 16.5(d).

Second, Government Code § 25103 states that "a board ***may by resolution authorize the use of a facsimile signature of the chairperson of the board acting in any capacity***, where the board sits as the governing body, agency, or entity on all papers, documents, or instruments requiring the signature of the chairperson of the board, ***including all resolutions, orders, ordinances***, contracts, minutes, notices, deeds, leases, papers and records of the board ***except that the original copy thereof, or the copy thereof filed in the office of the clerk of the board, shall bear the personal signature of the chairperson or shall have been delivered to him or her***, and those papers, documents, or instruments bearing the facsimile signature shall be accorded the same force and effect as though personally signed by the chairperson. A certificate by the clerk that a copy of that document has been delivered to the chairperson of the board shall be prima facie evidence of the delivery."

Third, Government Code § 25105 states that "In the event the authorization provided herein is granted, the personal signatures required by Section 25103, if technically feasible, may be reproduced by the authorized process, and the reproduced signatures shall be deemed to satisfy the requirement of Section 25103. ***If the documents are signed using a digital signature, reproduced documents shall be considered authenticated if the reproduced documents are created by a trusted system, as defined in pertinent digital signature regulations.***"

In addition, the UETA contains a broad statement as to the effectiveness of electronic signatures: "[i]f a law requires a signature, an electronic signature satisfies the law." Civ. Code § 1622.7(d). While there are some categories of transactions that are excluded under the UETA and/or that have separate wet signature requirements, the board resolution signature requirement is not listed among them. See Civ. Code § 1633.3(b).

Further, the County Manager's Office has an electronic signature policy outlined in Administrative Memo B-29 ("Electronic and Facsimile Signatures", dated July 13, 2013). That policy permits use of

an electronic or facsimile signature in lieu of an original/wet signature in connection with various internal and external County activities.

County Counsel has reviewed and approved the accompanying resolution.

**FISCAL IMPACT:**

There is no fiscal impact associated with adoption of this resolution.