



City of Ferndale

CITY COUNCIL STAFF REPORT

MEETING DATE: August 17, 2020 BILL # _____

SUBJECT: Electronic Signatures (New Chapter FMC 3.50)

DATE: August 17, 2020

FROM: Staff

PRESENTATION BY: Mallorie Powell, Sirke Salminen, Jori Burnett

EXHIBITS

EXHIBIT 1 Draft Ordinance

EXHIBIT 2 Draft Policies

RECOMMENDATIONS: Add a new chapter (3.50 – Electronic Signatures) to the Ferndale Municipal Code (FMC). The new chapter would formally and permanently (unless changed) allow electronic signatures as a recognized alternative to “wet” signatures when conducting City business, except where specifically prohibited. No public hearing is necessary.

BACKGROUND: The use of electronic signatures has grown over the last several years in both the public and private sector. Advances in technology and encryption have created industry standards that, when combined with appropriate policies and procedures reduce or eliminate the potential for forgery and misuse.

The COVID-19 pandemic and resulting social distancing orders have made it more challenging to conduct business in person, and this includes the ability to obtain signatures quickly in-person. As a result, the City has necessarily expanded its use of electronic signatures in many areas, as an emergency measure. Staff believe that it is appropriate to codify these modifications and to establish, at an administrative level, policies and procedures that will ensure appropriate internal controls in order to maintain this system not only during the current emergency – but as a permanent policy.

ANALYSIS: Finance Department staff reviewed authorizing legislation from other Washington State jurisdictions, as well as best management practices identified by mrsc.org when preparing the draft code section, ordinance, and policies. The code itself is relatively simple and accomplishes three major goals:

1. Treating e-signatures and “wet” signatures as having the same force and effect.
2. Authorizing City employees with existing signature authority to also have e-signature authority.

3. Directing the Finance Director to establish policies and procedures on an administrative level (Exhibit 2), which do not require adoption by Council, and may be modified administratively to react to or anticipate changes in technology or process.

The policies themselves seek to ensure that a digital signature is not merely a picture of a signature, but rather one that can also reflect the date and time of the signature and can be re-transmitted to other parties without losing its integrity. The policies do not name a specific software vendor for producing e-signatures, as there are now many alternatives that provide equivalent protection.

As noted, the policies may be modified administratively if and when it becomes necessary – most likely as a result of changes in technology, potential unforeseen use of e-signatures, or security concerns.

LEGAL REVIEW: The City Attorney has reviewed the draft ordinance, chapter, and policies. The City's proposed controls also generally reflect best management practices identified by mrcs and deployed by other jurisdictions.

FISCAL IMPACT: None. The policies do not require the purchase of additional software or training. The City could potentially experience minor cost savings over time by moving to a more-paperless system – resulting in less duplication or re-inputting of data (staff time savings), and a reduction in paper. However, Staff does not wish to suggest that these policies alone would necessarily or immediately result in these cost-savings.

CONCLUSIONS: Staff recommends approval. Staff believes that the adoption of e-signature capabilities is appropriate in 2020 for many reasons, and that the internal controls proposed will protect the City.

ORDINANCE #

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF FERNDALE, WASHINGTON,
AUTHORIZING THE USE OF ELECTRONIC SIGNATURES FOR CITY BUSINESS AND
ESTABLISHING A PROCESS FOR SUCH USE OF ELECTRONIC SIGNATURES.**

WHEREAS, beginning in 2016, Chapter 19.360 RCW authorized local agencies to use an electronic signature where a written signature is normally required unless otherwise provided by law; and

WHEREAS, effective June 11, 2020, through Engrossed Substitute Senate Bill 6028 ("ESSB 6028"), Chapter 19.360 RCW was repealed, and the Uniform Electronic Transactions Act was adopted; and

WHEREAS, ESSB 6028 gives local agencies essentially the same authority for use of electronic signatures as Chapter 19.360 RCW and is intended to facilitate use of electronic transactions consistent with other applicable law, and to bring consistency to reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

WHEREAS, ESSB 6028 defines an "electronic record" as "a record created, generated, sent, communicated, received, or stored by electronic means"; and defines an "electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record"; and

WHEREAS, ESSB 6028 provides that "[a] record or signature may not be denied legal effect or enforceability solely because it is in electronic form; a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation; if a law requires a record to be in writing, an electronic record satisfies the law; and if a law requires a signature, an electronic signature satisfies the law"; and

WHEREAS, to promote social distancing during the COVID-19 pandemic, and to increase the effectiveness and efficiency of the City of Ferndale's business processes now and in the future, the City desires to utilize electronic signature software to apply electronic signatures to legally enforceable electronic records as allowed by ESSB 6028; and

WHEREAS, the City of Ferndale recognizes electronic signatures as having the same legal effect as a written signature unless the law specifically provides otherwise; and

WHEREAS, the Ferndale City Council considered this matter at its regularly scheduled meeting of August 17, 2020;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FERNDAL DO ORDAIN AS FOLLOWS:

Section 1. Chapter 3.50 (Electronic Signatures) is hereby established, as shown below.

**CHAPTER 3.50
ELECTRONIC SIGNATURES**

Sections:

3.50.010 Purpose

3.50.020 Force and Effect

3.50.030 Electronic Signature Authorization

3.50.040 Policies and Procedures Established

3.50.010 Purpose. To establish an electronic signature policy for the City of Ferndale.

3.50.020 Force and Effect. Electronic records and electronic signatures shall have the same legal force and effect as hard-copy records and "wet" signatures.

A. Unless prohibited or required by law, whenever the use of a written, affixed by hand, or "wet" signature created when a person physically marks a document with the intent to sign the record is authorized or required, an electronic signature may be used with the same force and effect.

3.50.030 Electronic Signature Authorization. All City of Ferndale employees who are designated to sign City documents are authorized to use electronic signature software to apply electronic signatures to electronic records if such an option is available.

3.50.040 Policies and Procedures Established. The Finance Director shall establish policies and procedures for electronic signatures consistent with this chapter.

APPROVED AND ADOPTED by the City Council of the City of Ferndale in regular session this 17th day of August, 2020.

ATTEST:

Greg Hansen, MAYOR

Susan Duncan, MMC, CITY CLERK

Approved as to form:

Dannon Traxler, CITY ATTORNEY

Exhibit A

Use of Electronic Signatures Policy

Purpose

This policy is intended to establish guidelines for the use of electronic signatures for City transactions under the authority of ESSB 6028. Allowing the use of electronic signatures on City records will promote social distancing during the COVID-19 pandemic and will also provide long-term improvement to the City's efficiency in processing records to ultimately conserve public resources. The City will utilize electronic signature software to apply electronic signatures to legally enforceable electronic records. This policy will apply to any electronic signature software that is adopted by the City in the future.

References

Chapter 19.360 RCW	Electronic Signatures and Records
ESSB 6028	Uniform Electronic Transactions Act

Definitions

Electronic Record: A record created, generated, sent, communicated, received, or stored by electronic means.

Electronic Signature: An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

Wet Signature: A signature created when a person physically marks a document with the intent to sign the record.

Policy

1. The City encourages electronic transactions and the use of electronic signatures, and unless otherwise specified by law, recognizes electronic signatures as legally binding and equivalent in force and effect as a wet signature or a signature that is affixed by the hand.
2. The City authorizes the use of electronic signature software to apply electronic signatures to electronic records, and any future electronic signature software that is adopted by the City. The software adopted by the City must have the ability to produce an electronic signature that complies with the required guidelines of an electronic signature outlined below.

3. Electronic signatures may only be used to conduct City business when there is reasonable assurance of the integrity, authenticity, and nonrepudiation of the associated electronic documents.
4. The use of electronic records and signatures shall apply to all internal and external activities, documents, and transactions.
5. For an electronic signature to be valid, it must contain all of the following:
 - a. Appear in the form of the person's name (typed) or an electronic image of a person's physical signature. Pictures, Clipart, or other images are not acceptable forms of an electronic signature.
 - b. The date and time the electronic signature was applied to the record.
6. Electronic records that contain electronic signatures should be digitally sent or delivered in person by the person who most recently signed the document; and the electronic record must be capable of being printed or stored by the recipient as a method of retention.
7. Falsification of electronically signed records and electronic signatures is prohibited. Electronic signatures cannot be applied with another employee's name, and if an employee has been given authority to sign on behalf of another employee, they shall use their own electronic signature along with a note stating they are signing on behalf of another employee. For example, if the City Administrator is signing on behalf of the Mayor, the electronic signature could read as follows: [City Administrator's electronic signature] for [printed name of Mayor].
8. An electronic signature is an acceptable substitute for a wet signature on records requiring the signature of any record whenever the use of a wet signature is authorized or required, unless otherwise prohibited by law.
9. This policy in no way affects the City's ability to conduct a transaction using a physical medium and shall not be construed as a prohibition on the use of wet signatures.