

REPORT

Legislative Services

To: Mayor Cote and Members of Council **Date:** February 28, 2022

From: Jacque Killawee
City Clerk **File:** 05.1035.10

Item #: 2022-124

Subject: Electronic Signature Policy

RECOMMENDATION

That Council approve the Electronic Signature Policy and direct staff to bring forward the necessary bylaw changes.

PURPOSE

To request Council approve the Electronic Signature Policy and direct staff to bring forward the changes needed to add it to the Records Management Program Bylaw, which will allow the City to use electronic means to legally bind documents and facilitate the City's continued migration to an electronic work environment.

BACKGROUND

A signature indicates that a person, or an organization such as The Corporation of the City of New Westminster, has agreed to the content of a document. This signature is traditionally thought of as pen on paper (wet signature) but in the electronic environment it is being redefined. In 2001 the federal government enacted the Personal Information Protection and Electronic Documents Act (PIPEDA) which defines what electronic signatures are, and states, among other things, that where there is a signature requirement under specific federal laws, the requirement can be satisfied by an electronic signature. Around the same time, the provincial government of BC established the Electronic Transactions Act (ETA) which also defines electronic signatures and regulates their use.

The City has been working in an electronic environment (where documents reside only in an electronic state) for some time now but there is still a common misconception that

a reference in legislation to a “signature” or “signed document” refers only to an ink mark on paper. There is little understanding of what is meant by an electronic signature. The ETA speaks to how a document cannot be denied legal effect just because it is in electronic form, and how a legal requirement that a document be signed can be satisfied by an electronic signature.

The ETA does provide exclusions where electronic signatures are not allowed. The most applicable for the City is the directive that documents creating or transferring interests in land cannot be signed electronically. The Land Title Act further defines the requirements for the signing of these documents.

The City’s transition to an electronic work environment, driven by the strategic goal of organizational effectiveness, was accelerated during the Covid-19 pandemic. The City had to rapidly pivot to contactless service and a workforce that was often working remotely. The challenge to continue to function and provide services while operating remotely helped hasten the transformation of our current processes by developing alternative ways to do business. Having the option to sign some documents electronically will aid in this continuing transition.

EXISTING POLICY AND PRACTICE

Currently the City does not have a policy regarding electronic signatures. However, systems and work demands are increasingly requiring the City to consider an electronic mark of approval.

Some City systems such as the e-agenda system e-SCRIBE have electronic approval built into them. These do not require a signature as the authentication of the approval comes from system logins and passwords. Systems such as these are increasingly common. The most common form of electronic approval that all staff use is email. No signature is present on an email and often no signature block but the courts have found that an email sent from a specific person’s email address acts as proof of the sending individual’s intent.

In another example, with the pandemic and the need to work from home, many staff have created a scanned copy of their written signature to append to letters and other documents where appropriate. As well, the City accepts Digital signatures, a specific type of electronic signature with the strongest security, from registered professionals such as Engineers, Architects, and Surveyors who are certified to sign electronically by their professional bodies.

Due to public health orders and the change to more remote work, staff have observed that the process of getting an ink signature on a document can sometimes take days to weeks and involve steps such as printing, scanning and mailing. More of the City’s external customers are moving to electronic signatures and are looking to do business in this way. For some staff it has become a challenge to provide good customer service in a timely manner using traditional ink signatures.

ANALYSIS

The approval systems at the City have developed organically to meet needs as in all municipalities. However the current practice described above opens the City up to liability if staff members select different methods of electronic signature for the same documents or are unaware of the rules for particular documents. This is particularly important regarding documents where the ETA and the Land Title Act provide specific guidance regarding signature requirements. The Electronic Signature Policy attached to this report (Attachment 1) is designed to remove this liability by providing staff with guidance.

The policy arose from a need seen by the IT Working Group which is made up of staff from all departments and was formed to address the technical issues and challenges arising from the sudden change in work due to Covid-19. The possibility of using electronic signatures was raised with the group and staff spoke to the issues they were experiencing trying to complete their usual approval and signing processes with staff not on site and the public not allowed in the building. While solutions were being discussed it became apparent that there needed to be a policy to guide both departments and IT on electronic signature usage. The Electronic Signature Policy has been a key work product from this working group.

Electronic signatures are already being used by the City. Any existing electronic signing practices will need to conform to this policy. The policy also provides guidance on what types of records are still legally required to be signed with an ink (wet) signature. It will not force existing practices to become electronic, but will provide the framework for the legally compliant use of electronic signatures within the City. Going forward, any processes that staff would like to change to a fully electronic system will be referred to the policy to ensure that the change is legally allowed and is compliant.

An initial step in creating the policy was surveying all City departments for their current practices regarding which of their documents have a signing or approval component and what types of documents are submitted by the public where a signature is needed.

Local municipalities and crown corporations were also surveyed as to their practices relating to electronic signatures and whether they had existing policies in place. While most municipalities have begun using electronic signatures in similar ways to New Westminster, none of them have formalized their use in a policy. Searches were done for existing policies in other municipalities and jurisdictions and only a small number were found in Canada and the US. If the City were to implement this policy it would be the first municipality in the Metro Vancouver area to do so.

The policy defines what an electronic signature is, the many forms it can take, the differing levels of security different forms can provide, and where and by whom they can and cannot be used. It identifies the highest risk and highest value signing processes within the City and the electronic signature that would be required, if legally allowed, to meet verification and validity standards and protect the City's interests.

Although the ETA regulates the general use of electronic signatures in BC, in order to determine whether an electronic signature is acceptable it was necessary to look to the applicable specific legislation that particular documents fall under. Multiple pieces of legislation were reviewed and because of the complex nature of this, a legal review was completed by Young Anderson to ensure the policy complies with laws and to provide clarity. The Manager of Legal Services also reviewed the policy.

The policy provides guidance to staff on their individual responsibilities and on how they are to manage and use their electronic signatures. The Manager of Legal Services and the Legislative Services Division of the Office of the CAO will have the authority and discretion to make decisions regarding the acceptance of electronic signatures. This is consistent with provincial legislation and the city's delegation bylaw. Information Technology Services will be responsible for authorizing and managing the electronic signature software or systems. Given the complexity of the City's business it is understood that there will be multiple forms of electronic signature systems needed to support a myriad of business processes.

Appendix A of the policy is a table that compiles the types of documents that are signed at the City and the type of electronic signature that can be used to sign these documents based on legal requirements and liability. Staff will be able to refer to the list to determine both the use and acceptance of different types of electronic signatures. It is important to note that the ability to use electronic signatures does not need to replace the use of traditional ink signatures on documents and that the ink form of signature will always be accepted.

The policy, once in place, will give staff and the IT Department the ability to review and analyze their current workflows and determine whether they can change a process to a fully electronic one. It will also allow the City to review and adjust processes created during the COVID-19 pandemic to bring them in line with best business practices. It will allow the City to increase efficiency and improve our interactions with customers.

Under the *Community Charter* and the City's delegation bylaws, responsibility for records and documentation rests with the City Clerk. The City Clerk's responsibility is formalized in the City's Records Management Bylaw 7987, 2018, which establishes a corporate records management program, sets out the relationship with the archives, and provides the legal framework for document scanning. The electronic signature policy should be appended to this overarching governance document. If Council approves the policy, staff will bring the needed bylaw amendments forward.

SUSTAINABILITY IMPLICATIONS

This policy supports both broad environmental goals by reducing the need for paper documents, and also the Seven Bold Steps for Climate Change by making remote communication with the City by residents, clients and staff simpler and easier, thus reducing the number of trips needed to conduct city business.

FINANCIAL IMPLICATIONS

There is no cost to implement this policy. The IT Working Group and individual departments will begin the implementation of the policy within existing budgets or will include the system costs in future annual budget requests.

The Policy reduces the City's risk by providing clarity and consistency for staff on the proper use of signatures and the acceptance of submitted electronic signatures.

INTERDEPARTMENTAL LIAISON

The policy was developed with input from the IT Working Group and in consultation with the Manager of Legal Services and of the City's solicitor Young Anderson.

OPTIONS

There are three options before Council:

- 1) That Council approve the Electronic Signature Policy and direct staff to bring forward the necessary bylaw changes,
- 2) That Council provide feedback on the policy and ask staff to return with the revised policy, or
- 3) That Council provide other direction.

Staff recommend option 1.

CONCLUSION

The goal of the proposed Electronic Signature Policy is to guide the City as we make the transition to an electronic work environment and to ensure our current and future processes are legally compliant. It will provide guidance regarding when electronic submissions are considered official and acceptable by the City and will help expedite workflow processes, reduce recordkeeping requirements and improve customer service.

ATTACHMENTS

Attachment 1: Electronic Signature Policy

APPROVALS

This report was prepared by:
Robert Deeth, Record Analyst

This report was approved by:
Jacque Killawee, City Clerk
Lisa Spitale, Chief Administrative Officer