



CITY COUNCIL AGENDA STATEMENT



August 7, 2018

File ID: 18-0261

TITLE

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DELEGATING AUTHORITY TO EXERCISE DISCRETIONARY APPROVAL OF DESIGNS FOR PUBLIC WORKS AND PUBLIC IMPROVEMENT PROJECTS TO THE CITY ENGINEER OR DESIGNEE

RECOMMENDED ACTION

Council adopt the resolution.

SUMMARY

This item is to approve a resolution delegating discretionary approval authority of designs for public works and public improvement projects to the City Engineer or designee. The purpose of the resolution is to ensure that the City's approval of designs is consistent with best practices to allow the City to invoke design immunity protections under State law.

ENVIRONMENTAL REVIEW

This proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a "Project" as defined under Section 15378 of the state CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to CEQA. Notwithstanding the foregoing, it has also been determined that the activity qualifies for an Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act State Guidelines. Thus, no environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

State law provides public agencies with a design immunity defense for public works projects designed and constructed by a public agency, provided that the design was approved in advance of construction by the agency's legislative body or by an employee authorized by the legislative body to give such design approval. The purpose of the design immunity is to protect local governments by preventing a jury from second-guessing the legislative body's decision to adopt a design.

In 2017, the City Council approved an amendment to the City's Purchasing Ordinance which provided for a significant increase in the dollar threshold for award of contracts at the staff level. For example, under the prior Purchasing Ordinance, the City Council was required to approve the award of all CIP contracts over \$100,000. Under the revised ordinance, the City Council is now only required to approve the award of CIP contracts that are over \$2,000,000. As such, a significant number of contracts that were previously approved by the City Council are now approved at the staff level.

To better protect the City from potential design defect claims and preserve its design immunity protection afforded by State law, staff recommends that the City Council formally delegate to the City Engineer, or designee, the authority to approve plans and designs for all public works and public improvement projects, including those that are not considered and/or approved by the City Council.

It is important to note that this resolution does not impact, affect, or change: (i) the City's discretion or authority to approve projects or (ii) the City Council's discretion or authority appropriate or approve project funding. Further, this resolution does not circumvent other established project design review or approval processes. This resolution is narrowly limited to approval of project designs for the purpose of supporting the City's design immunity protections as provided by State law.

DECISION-MAKER CONFLICT

Staff has reviewed the property holdings of the City Council and has found that this action is not site specific.

Staff is not independently aware, and has not been informed by any council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong & Secure Neighborhoods, and a Connected Community. This action supports the goal of Operational Excellence by providing a formalized approval process for designs to promote the City's ability to minimize liability exposure to conditions of public property.

CURRENT-YEAR FISCAL IMPACT

There is no impact to the General Fund from this action.

ONGOING FISCAL IMPACT

There is no ongoing fiscal impact to the General Fund from this action.

ATTACHMENTS

None.

Staff Contact: Michael J. McDonnell, Deputy City Attorney