



DATE: April 15, 2024

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Jordan Green, Assistant City Attorney  
Dylan Brady, Assistant City Attorney

SUBJECT: Introduction of an Ordinance (First Reading) of the City Council of the City of Petaluma Amending Chapter 3.04 of the Petaluma Municipal Code to Add Section 3.04.065 which will Provide the Director of Public Works and Utilities the Authority to Approve Plans, Specifications and Designs for Public Works Projects, Which is in Addition to City Council's Authority to Review and Approve Plans, Specifications and Designs

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### **RECOMMENDATION**

It is recommended that the City Council introduction an Ordinance Amending Chapter 3.04 of the Petaluma Municipal Code to Add Section 3.04.065 which will provide the Director of Public Works and Utilities the authority to approve plans, specifications and designs for public works projects.

### **BACKGROUND**

Design immunity, codified in Government Code Section 830.6, is an affirmative legal defense that protects public entities, such as cities, from liability for injuries allegedly caused by the design of public facilities, like roads, under certain circumstances. Design immunity serves as a complete legal defense capable of dismissing lawsuits against a city before they proceed to trial. To prevail on a claim for design immunity, the public entity has the burden of establishing these three elements:

1. A feature in the design caused the accident;
2. Discretionary approval of the design *prior to* construction; and
3. Substantial evidence supporting the reasonableness of the design.

The proposed Ordinance, **Attachment 1**, would bolster the City's ability to successfully assert a design immunity defense in civil litigation. As the proposed Ordinance would help prove the second element of a design immunity defense by adding statutory authority within the City's Municipal Code that the Director of Public Works and Utilities or their designee has the discretionary authority to approve designs and plans of "public works" projects as defined by

California Labor Code Section 1720.<sup>1</sup>

This will enable the City to save its resources, both financial and staff time, by being dismissed from a lawsuit early in the litigation process. Providing this authority to the Director of Public Works and their designee(s) does not remove authority from Council or any other classifications. Rather, it solidifies the current authority inherently granted to the Director of Public Works and project managers who are also engineers. Further, staff will continue to bring high profile project designs, like the City did with D-Street, North McDowell, and the skate park, to Council for your input, direction, and ultimate approval.

## **DISCUSSION**

The proposed Ordinance, **Attachment 1**, would amend Chapter 3.04 of the Petaluma Municipal Code, titled "Personnel System" to add Section 3.04.065 of the Petaluma Municipal Code titled "Director of Public Works and Utilities authority to approve plans, specifications and designs". The entirety of the proposed amendment is directly below.

Section 3.04.065 Director of Public Works and Utilities authority to approve plans, specifications and designs.

The Director of Public Works and Utilities or designee is granted the discretionary authority to approve plans, specifications and designs for "public works," as that term is defined in Section 68 of the Petaluma Charter, California Public Contract Code Section 1101, California Labor Code Section 1720, and other applicable law. The Director of Public Works and Utilities or designee may delegate authority to approve plans, specifications and designs for public works projects, in writing, to a City of Petaluma employee, so long as such employee possesses a valid certificate of registration as an engineer by the California Board of Professional Engineers both at the time of delegation and at the time of approval of the plans, specifications and designs. For purposes of this section and Section 830.6 of the California Government Code, a stamp or signature by the Director of Public Works or designee or delegee pursuant to this section on public works plans, specifications or designs, or a writing signed by the Director of Public Works or designee or delegee pursuant to this section concerning public works plans, specifications or designs (any or all of which may be in electronic form), shall be conclusive evidence of discretionary approval of the plans, specifications or designs.

The proposed Ordinance serves a dual purpose. Firstly, it grants statutory authority to the Director of Public Works and Utilities to approve designs and plans for "public works projects" and second, allows for the delegation of this authority to specific employees. Delegating this power is crucial, as established in the case of *Thomson v. City of Glendale* (1976) 61 Cal.App.3d 378, where it was affirmed that discretionary authority can be delegated. This provision for delegation will effectively streamline the Director's workload. Additionally, it's worth noting that the city of Santa Clara has already implemented an ordinance with similar

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<sup>1</sup> [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=LAB&sectionNum=1720](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB&sectionNum=1720). Link to Labor Code Section 1720.

language, further validating the efficacy of this approach.

Currently, the City's traffic engineer, city engineer, and/or senior engineers review and approve project designs based on their training and experience. In coordination with legal, staff have begun fine-tuning this process by drafting a "reasonableness memo" for each project. In this memo, staff detail the rationale behind deeming the design reasonable, which will demonstrate the substantial reasonableness of the design and fulfill the third element of the design immunity defense. These justifications will be integrated into the recitals of resolutions approving public works projects. Furthermore, upon project completion, the resolution accepting the project will affirm that it was executed in accordance with the reasonable design.

By combining the proposed Ordinance with these refined public works processes, the City is in a good position to prevail on a design immunity defense in applicable lawsuits, thereby saving both staff time and the city's financial resources.

### **PUBLIC OUTREACH**

This item was discussed during the April 8, 2024, City Council meeting and was noticed in compliance with the Brown Act.

### **COUNCIL GOAL ALIGNMENT**

The authorization of this recommendation is in direct alignment with the City Council's goal of creating "A City That Works," specifically, with objective #1 to "Ensure a fiscally and organizationally sustainable City..."

### **ENVIRONMENTAL REVIEW**

The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(4), in that, approving this action does not meet CEQA's definition of a "project," because the action does not have the potential for resulting either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because this is a personnel-related action that constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

### **FINANCIAL IMPACTS**

The proposed Ordinance is anticipated to yield cost savings for the City by bolstering its prospects of successfully invoking design immunity. These savings would stem from avoiding trial altogether or reducing the number of causes of action to litigate, thereby reducing legal fees, costs and potential verdicts.

### **ALTERNATIVES**

Council could choose to not introduce and adopt the proposed ordinance.

## **ATTACHMENTS**

1. Proposed Ordinance