

EFFECTIVE DATE
OF ORDINANCE

ORDINANCE NO. XXXX N.C.S.

Introduced by

Seconded by

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

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, the proposed Ordinance would bolster the City's ability to successfully assert a design immunity defense in 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 designee has the discretionary authority to approve designs and plans of "public works" projects as defined by Section 68 of the Petaluma Charter, California Public Contract Code Section 1101, California Labor Code Section 1720, and other applicable law; and

WHEREAS, the proposed Ordinance will enable the City to save its resources, both financial and staff time, by being dismissed from a lawsuit early in the litigation; and

WHEREAS, 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; and

WHEREAS, the City Council of the City of Petaluma held a duly noticed public meeting on April 15, 2024, at which time all interested parties were given full opportunity to be heard and to be present.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PETALUMA AS FOLLOWS:

Section 1. Recital Finding. The City Council hereby finds and determines the foregoing recitals to be true and correct and hereby incorporates them into this ordinance as findings and determinations of the City Council.

Section 2. CEQA Finding. 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.

Section 3. Amendment of Chapter 3.04 to add Section 3.04.065 to the Petaluma Municipal Code. Chapter 3.04 of the Petaluma Municipal Code is amended to add Section 3.04.065 to read as follows:

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.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Petaluma hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

Section 7. Effective Date. This ordinance shall become effective thirty (30) days after the date of its adoption by the Petaluma City Council.

Section 8. Posting/Publishing of Notice. The City Clerk is hereby directed to publish or post this ordinance or a synopsis for the period and in the manner provided by the City Charter and other applicable law.

INTRODUCED, and ordered posted/published, this 15th day of April 2024.

ADOPTED this _____ day of _____, 2024, by the following vote:

Ayes: Noes:

Abstain: Absent:

Kevin McDonnell, Mayor

ATTEST:

APPROVED AS TO FORM:

Caitlin Corley, City Clerk

Eric Danly, City Attorney