

# Responses to Council Questions and Comments

4/15/2024

## **Item #3: 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**

- Question: How can we reconcile the conflict between 1) increasing efficiency and efficacy to get projects done by giving staff ability to move forward quickly and 2) substantial public input and council input into projects? Can staff put this item into perspective with real situations (past, present, future) since the actual changes are hard to see from this high tactical level? Where is the line drawn and who draws it on these types of projects? Move forward or when to ask for public input and council confirmation?
  - Response: This question involves the separate but related issue of what public works project designs are presented to Council for their deliberation and approval and what project designs staff approve. The proposed ordinance will not change the City's current practice regarding approving project designs. Nor does the proposed ordinance alter in any way the Council's exclusive prerogative of awarding public works construction projects that are subject to competitive bidding. Rather, the ordinance codifies in the Municipal Code senior Public Works engineers' authority to approve plans and designs. This authority is already included in their job specifications and scope. The ordinance will allow the City to better plead "design immunity" defense in lawsuits alleging dangerous conditions as a result of discretionary project designs.

Design immunity is a statutory defense that if successfully plead affords immunity from liability for injuries caused by a dangerous condition of public property when the plan or design creating the condition was reasonably approved before construction. An element of a design immunity defense requires "discretionary approval of the plan before bidding." This element can either be established when the City Council approves a project design, or when a staff member with statutory authority approves a project design. The proposed ordinance codifies this statutory authority for Public Works senior engineers whose authority to approve plans and designs is already included in their City-Council approved job specifications.

Availability of the design immunity defense will allow the City to save money and staff time litigating alleged dangerous condition claims. For example, in a recent lawsuit in which a plaintiff was struck by a vehicle while using a crosswalk on East Washington Boulevard, the plaintiff alleged that the crosswalk was a dangerous condition lacking sufficient safety mechanisms. The crosswalk design had been approved by staff. The City was successful in defending the lawsuit and convinced a jury that the crosswalk was not a dangerous condition. However, in reaching that verdict, the City expended tens of thousands of dollars in expert witness fees, staff time, and attorney fees. If enacted the proposed ordinance would make available to the City significant savings in defending dangerous condition lawsuits.

Note that regardless of the Council action on the recommended design immunity legislation, staff will continue to carefully evaluate potential City liability in response to claims to identify those claims that the City should settle and those that the City should

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defend. Staff will also continue to make recommendations to the City Council regarding such claims so that the City Council can deliberate and give direction on the staff recommendations regarding the City's response to claims. Staff also intend to continue established City practices of ensuring to the greatest extent possible the safety of City project designs and of remediating conditions on City property that may be involved in injuries or losses.

The proposed ordinance would not in any way alter which public works projects are brought before Council for award. Since the proposed legislation does not alter the authority reserved to the City Council to award public works construction projects subject to competitive bidding (currently, all those with an estimated project cost above approximately \$32,000), if the City Council adopts the proposed legislation, it will still behoove staff to seek City Council discussion and approval regarding major public works project designs. As the Council has been aware, it has been staff's practice to bring significant capital improvement projects to Council input and approval pre final design. Such projects have included D-Street improvements, the new Skatepark improvements, the proposed new Fire headquarters station, and the North McDowell vehicular, pedestrian and bicycle improvements. Recent capital projects with staff-approved designs for which the Council has awarded construction projects include the Parks Access Improvement Plan, which featured robust public outreach, a community survey and presentation i to the Recreation, Music and Parks Commission and the on-call striping contract which will be used for the D-Street improvements. City staff are aware that if the City Council is unsatisfied with a project design or related public process regarding a project presented to the City Council for award, the City Council has the discretionary authority to not approve the project, decline to award it and direct project changes. The proposed ordinance would not affect these important City Council prerogatives.

- Question: Can staff provide examples of projects that staff could approve under this recommendation?
  - Response: Senior Public Works staff already has the authority to review and approve plans and projects. This authority is provided in their job specifications which is approved by City Council. The proposed ordinance won't change which projects staff approve and which projects City Council approves, it simply codifies the authority of Public Works staff to approve projects within the City's Municipal Code. Examples of projects approved by staff are pretty rare and include small projects that qualify as minor construction agreements under \$33k in value such as some minor traffic improvements including restriping and signage. There were two CIP projects recently that started out with larger budgets (over \$50k) but were value engineered to under \$33k in contract value and so were approved without council engagement: they were the Transit Center electrical transfer switch installation and the asphalt curb near the airport installed along E. Washington Street.