



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: October 7, 2025

TO: LaTanya Bellow, City Manager

FROM: Mohamed Alaoui, Public Works Director
John I. Kennedy, City Attorney

SUBJECT: **Ordinance Of The City Council Of The City Of Emeryville Amending Section 7-7.01 Of Chapter 7 Of Title 7 Of The Emeryville Municipal Code To Delegate Discretionary Authority To The Public Works Director And Authorized Delegees To Approve The Plan Or Design Of Improvements To Public Property; CEQA Determination: Not A Project And Exempt Pursuant To CEQA Guidelines Sections 15378(a), 15378(b)(3) And 15061(b)(3)**

RECOMMENDATION

Staff recommends that the City Council waive first reading and introduce by title only the attached Ordinance amending Section 7-7.01 of the Emeryville Municipal Code to delegate discretionary authority to the Public Works Director and authorized delegees to approve the plan or design of improvements to public property.

BACKGROUND

California Government Code section 830.6 grants design immunity to public entities which shields them from liability for injuries caused by a plan or design for construction of, or an improvement to, public property. In order to successfully assert the affirmative defense of "design immunity," the public entity must establish three elements: (1) a causal relationship between the plan or design and the injury; (2) the plan or design was approved before construction by either a legislative body or an employee exercising discretionary authority to approve the plan or design; and (3) there is substantial evidence supporting the reasonableness of the plan or design. However, a public entity can lose design immunity if a change in physical conditions makes the plan or design dangerous and the public entity has notice of the danger created. Even in these circumstances, design immunity remains in place for a reasonable period to allow the public entity to obtain funds and carry out corrective work to conform the property to a suitable design or plan. Further, if the public entity cannot fix the property due to insufficient funds, or because it is impossible or impractical to do so, design immunity remains as long as the public entity makes a reasonable attempt to provide adequate warnings of the condition.

The second element is critical to the design immunity defense: a plan or design needs to be approved by an employee with discretionary authority to approve the plan or design prior to construction. On December 16, 2014, City Council adopted Ordinance No. 14-012 which delegated discretionary authority to approve plans or designs from the City Council to the City Engineer. Specifically, Emeryville Municipal Code section 7-

701(b) currently provides that “(t)he City Engineer is hereby granted the exclusive authority to approve and exercise discretionary authority as to the plan or design of a construction of, or an improvement to, public property in advance of the construction or improvement.” Currently, the City’s Public Works Director sits as the City Engineer but that has not always been the case and there is no legal requirement that they must do so.

DISCUSSION

The purpose of this Ordinance is to amend the Emeryville Municipal Code to further authorize the delegation of discretionary authority to approve the plan or design of public property improvements to include the City Engineer, the Public Works Director, and authorized delegee(s) since the City Engineer is not a standalone position within the City of Emeryville and, at times, may not be a City staff member. As a result, it is in the City’s best interest to also authorize the delegation of discretionary authority to approve plans or designs to the Public Works Director and, further, authorize the City Engineer or Public Works Director to delegate their discretionary authority to a City employee who is a licensed civil engineer on a project-by-project basis as memorialized in a written memorandum.

Authorizing the delegation by the City Engineer or Public Works Director to qualified and licensed staff is also important to ensure the timely approval of plans and designs. This is especially the case during the construction of a project when design decisions often must be made in the field. The proposed ordinance requires that the delegee be a licensed civil engineer employed by the City of Emeryville and drafted to ensure that the City can successfully invoke the defense of design immunity if all other required elements are met.

FISCAL IMPACT

Not Applicable

STAFF COMMUNICATION WITH THE PUBLIC

Not Applicable

CONFLICT OF INTEREST

Not applicable

CONCLUSION

Staff recommends that the City Council that the following actions:

1. Open the public hearing and take testimony on the proposed ordinance.
2. Close the public hearing and consider the Staff Report and proposed ordinance.

3. Introduce and waive first reading of the attached ordinance.

PREPARED BY: Michael Roberts, Senior Civil Engineer
John I. Kennedy, City Attorney

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**

A handwritten signature in blue ink, appearing to read "LaTanya Bellow", is written over a horizontal line.

LaTanya Bellow, City Manager

ATTACHMENTS

- Attachment A - Draft Ordinance