



Folsom City Council Staff Report

MEETING DATE:	1/23/2024
AGENDA SECTION:	New Business
SUBJECT:	Ordinance No. 1342 - An Ordinance of the City Council of the City of Folsom Adding Subsection D to Section 2.36.050 of the Folsom Municipal Code Pertaining to Design Immunity (Introduction and First Reading)
FROM:	City Attorney's Office

RECOMMENDATION / CITY COUNCIL ACTION

Staff recommends that the City Council introduce and conduct first reading of Ordinance No. 1342 - An Ordinance of the City Council of the City of Folsom Adding Subsection D to Section 2.36.050 of the Folsom Municipal Code Pertaining to Design Immunity.

BACKGROUND / ISSUE

Design immunity under Government Code Section 830.6 is one of the most powerful affirmative defenses for public entities. Partly due to a large number of lawsuits filed against public agencies alleging dangerous condition of public property with multi-million dollar demands, the City's risk pool, Northern California Cities Self-Insured Fund (NCCSIF) has requested that its member cities adopt an ordinance to formally document and preserve design immunity in those types of lawsuits.

POLICY / RULE

Pursuant to Section 2.02 of the City Charter, all powers of the City shall be vested in the City Council except as otherwise provided by the City Charter.

ANALYSIS

California law provides various causes of actions for aggrieved parties to sue for monetary and non-monetary damages, as well as immunities and defenses where the State Legislature has deemed to be important public policy to shield certain individuals and entities from liability. An example is legislative immunity where the City Council cannot be held liable for enacting laws. Another example is judicial immunity where judges cannot be held liable for making rulings contrary to popular sentiment.

Pertinent to public agencies being sued for an alleged dangerous condition of public property, the defense of design immunity will almost always be raised in a motion for summary judgment where the judge will be asked to decide whether there is any substantial evidence that the public property was reasonably designed. A civil engineer's opinion that the design was reasonably approved constitutes substantial evidence sufficient to support design immunity regardless of any conflicting witness testimony to the contrary.

The final design of all of the City's public works projects has routinely been approved by either the Public Works Director or the City Engineer. Their signatures on the plan documents constitute substantial evidence that the public works project was reasonably designed, therefore entitling the City to assert the design immunity defense in lawsuits alleging dangerous condition of public property. The City has always relied on a civil engineer's (i.e., City Engineer or the Public Works Director) stamp and signature on design documents to assert design immunity wherever appropriate. This Ordinance is prepared at the request of the City's risk pool NCCSIF to formally document and preserve the City's ability to raise design immunity as a defense.

FINANCIAL IMPACT

This item has no impact on the City's general fund.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) does not apply to activities that will not result in a direct or reasonably foreseeable indirect physical change in the environment (CEQA Guidelines §15061(c)(3)), or are otherwise not considered a project as defined by Public Resources Code §21065 and CEQA Guidelines §15060(c)(3) and §15378. This Council action meets the above criteria and is not subject to CEQA. No environmental review is required.

ATTACHMENT

Ordinance No. 1342 - An Ordinance of the City Council of the City of Folsom Adding Subsection D to Section 2.36.050 of the Folsom Municipal Code Pertaining to Design Immunity (Introduction and First Reading)

Respectfully submitted,

Steven Wang, City Attorney

ORDINANCE NO. 1342

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOLSOM ADDING
SUBSECTION D TO SECTION 2.36.050 OF THE FOLSOM MUNICIPAL CODE
PERTAINING TO DESIGN IMMUNITY**

The City Council of the City of Folsom does hereby ordain as follows:

SECTION 1 PURPOSE

The purpose of this Ordinance is to add subsection D to Section 2.36.050, “Authority and duties”, of the Folsom Municipal Code to formally document and preserve design immunity in lawsuits involving public works projects. This Ordinance confirms and ratifies past City practices of preserving and asserting the defense of design immunity in lawsuits where said immunity was raised and asserted by the City.

SECTION 2 ADDITION TO CODE

Section 2.36.050(D) is hereby added to the Folsom Municipal Code to read as follows:

2.36.050 Authority and duties.

D. The Public Works Director and City Engineer are authorized to approve plans or designs for purposes of design immunity pursuant to Government Code Section 830.6 for all public works projects approved by the City. Nothing in this section is intended to, nor will it, preclude the City Council from separately or additionally approving plans or designs for purposes of design immunity pursuant to Government Code Section 830.6.

SECTION 3 SCOPE

Except as set forth in this Ordinance, all other provisions of the Folsom Municipal Code shall remain in full force and effect.

SECTION 4 SEVERABILITY

If any section, subsection, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council declares that it would have passed each section irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared unconstitutional, invalid, or ineffective.

SECTION 5 EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days from and after its passage and adoption, provided it is published in full or in summary within twenty (20) days after its adoption in a newspaper of general circulation in the City.

This Ordinance was introduced and the title thereof read at the regular meeting of the City Council on January 23, 2024, and the second reading occurred at the regular meeting of the City Council on February 13, 2024.

On a motion by Council Member _____ seconded by Council Member _____, the foregoing ordinance was passed and adopted by the City Council of the City of Folsom, State of California, this 13th day of February, 2024 by the following roll-call vote:

AYES: Councilmember(s):

NOES: Councilmember(s):

ABSENT: Councilmember(s):

ABSTAIN: Councilmember(s):

Michael D. Kozlowski, MAYOR

ATTEST:

Christa Freemantle, CITY CLERK

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