



County of Los Alamos

Los Alamos, NM 87544
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Council Meeting Staff Report

June 6, 2017

Agenda No.: A.

Indexes (Council Goals):

Presenters: County Council - Regular Session

Legislative File: CO0496-17b

Title

Incorporated County of Los Alamos Ordinance No. 02-272, An Ordinance Repealing Chapter 31, Article VII, Section 232 of the Los Alamos County Code of Ordinances Related to Contract Claims.

Recommended Action

I move that Council adopt Incorporated County of Los Alamos Ordinance No. 02-272; An Ordinance Repealing Chapter 31, Article VII, Section 232 of the Los Alamos County Code of Ordinances Related to Contract Claims.

County Manager's Recommendation

The County Manager recommends that Council adopt Incorporated County of Los Alamos Code Ordinance No. 02-272.

Body

The County Attorney's Office and the County's Purchasing Agent recommends the County Council repeal Section 31-232 of the Los Alamos County Code of Ordinances ("Code"). As provided below, the County Attorney's Office in coordination with the Purchasing Agent consider the ordinance to have significant adverse legal implications to contractors and vendors, and the County, when disputes arise under County contracts.

Section 31-232 of the Code was initially adopted in 1991 as Title 11, Chapter 9, Section 102 (§11.09.102) as part of the County's establishment of its own procurement code in Code Ordinance 85-141. This section seems to have remain unchanged from 1991 until 2002. In 2002, the Council, in Code Ordinance 85-303, recodified the 1985 Code to the current edition to what is now known as the 2002 Los Alamos County Code of Ordinances. Initially placed in Title 11 of the 2002 Code, the Procurement Code then moved to its own Chapter/Title in 2008. In Code Ordinance No. 02-098, the Council moved the Procurement Code from Title 20 (Finance) to its own Chapter/Title, Chapter 31. As part of this move, various sections of the Procurement Code were updated, including Section 31-232. These changes were as follows: (1) description of purpose added for clarity; (2) subsection (a) given title for clarity; and (3) subsections (b), (c), (d) titles added for clarity and time limits of 15 days added.

The first noted use of this section of the Procurement Code appears to have been in 2016. After proceeding through the required dispute and protest process related to a construction/refurbishment contract, the County Attorney's office found that Section 31-232 appears to negatively impact the substantive rights of the County and any disputing contractor or vendor. As there is no yet defined procedure to process this type of claim in State District Court, the legal implications are uncertain. The County Attorney thus recommends this section be repealed.

..Alternatives

The Council can choose to not adopt the proposed action, however the County Attorney and staff believe this may limit the rights of parties in any future legal proceedings related to contract disputes.

Fiscal and Staff Impacts

The County Purchasing Agent, County Attorney, and staff do not believe there is a fiscal or staffing impact in approving this repeal and may decrease the overall costs in resolving contract disputes.

..Attachments

A - Notice of Publication.

B - Ordinance 02-272.