

Council Meeting Staff Report

November 13, 2018

Agenda No.: A.

Indexes (Council Goals):

Presenters: Alvin Leaphart

Legislative File: CO0539-18

Title

Incorporated County of Los Alamos Code No. 02-292: An Ordinance Repealing Article VII, Safety in Public Places, of Chapter 28, Offenses and Miscellaneous Provisions.

Recommended Action

I move that the County Council approve Code Ordinance No. 02-292 repealing Article VII, Safety in Public Places, of Chapter 28, Offenses and Miscellaneous Provisions contained in the Code of Ordinances of the County of Los Alamos, New Mexico.

County Manager's Recommendation

The County Attorney recommends that Council approve this Code Ordinance repealing Article VII, Safety in Public Places, of Chapter 28, Offenses and Miscellaneous Provisions contained in the Code of Ordinances of the County of Los Alamos, New Mexico. (See Attachment A)

Body

On or about August 28, 2018, the Chair of the County Council received a letter from the American Civil Liberties Union of New Mexico (ACLU NM) raising constitutional concerns regarding Chapter 28, Article VII, Safety in Public Places of the Los Alamos County Code of Ordinances ("Safety in Public Places Ordinance"). (See Attachment B) The County Attorney's Office reviewed the letter, the Code Ordinance in question, as well as controlling case law.

Based on that review, the County Attorney's office concluded that the constitutional concerns raised in the August 28, 2018 letter warranted review of the Code Ordinance for potential revision or repeal. Given these warranted concerns, the County Council enacted a moratorium through Resolution 18-22 on the enforcement of the Code Ordinance. (See Attachment C)

Based on subsequent review, the County Attorney's office found numerous county ordinances, which do not raise the First Amendment concerns plaguing the current Safety in Public Places Ordinance, that should address the public safety concerns expressed in the Safety in Public Places Ordinance. These County ordinances include, but are not limited to, Section 28-101 (Disorderly Conduct), Section 28-102 (Disturbing the Peace), Section 18-103 (Obstructing Movement), Section 28-115 (Interfering with Traffic or Pedestrians), Section 28-141 (Trespass).

Further, should it later be demonstrated that the above ordinances are not sufficient to address an aggressive panhandling problem within the County, the County would be warranted in adopting a more carefully tailored ordinance to overcome the First Amendment concerns inherent in the current Safety in Public Places Ordinance.

Alternatives

If the County Council does not approve Ordinance No. 02-292 repealing the Safety in Public Places Ordinance then the ordinance will remain in effect, and enforcement of the ordinance may resume after the expiration of the moratorium.

Fiscal and Staff Impact/Planned Item

There is no substantial fiscal or staff fiscal impact associated with the adoption of Ordinance No. 02-

Attachments

A - Incorporated County of Los Alamos Ordinance No. 02-292

B - American Civil Liberties Union of New Mexico Letter Dated August 28, 2018, to County Council

C - Incorporated County of Los Alamos Resolution No. 18-22