

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

SOLICITATION IN FRONT OF BUSINESSES

SUMMARY STATEMENT

At the February 22, 2011 Town Council meeting, Councilman Emick asked for legal options regarding a business owner's ability to restrict solicitors and/or signature gatherers from operating in front of their stores.

Similar to several sample ordinances provided by Councilman Emick, the Town's Municipal Code has regulations that govern trespass on private property and provides for the ability of a property or business owner to demand that people leave the property when they do not have permission to be there.

With respect to non profit groups and signature gatherers in particular, the issue of a business owner's right to allow or disallow these groups on private property vs. the non profit and signature gatherers right to be on private property has been a controversial subject for many years. Several court cases have made their way through the appeals process with decisions being reached on both sides of the argument under different specific circumstances as to the layout, use, and type of plaza or mall where the stores were located.

When responding to complaints by businesses about solicitors, staff has found it is typical for solicitors to produce paperwork declaring their right to stay on the property and solicit, while business owners/operators produce paperwork declaring their right to make the solicitors leave the property, in each case citing legal cases to support their particular action.
(Continued)

Recommended Action:

Provide direction to staff.

Proposed by: Code Enforcement **Item Number** _____

T. M. Approval: _____ **Budgeted Item** Yes No N/A

Presently, staff responds to these complaints to ensure solicitors are not blocking the entrance/exit of the store. In addition, if the solicitor is a non profit conducting business in the Town; staff ensures they have a business license. That has been the extent of Code Enforcement staff's involvement.

In looking at several court decisions regarding this issue, all of the parties involved were the businesses themselves vs. the solicitor or solicitor organization. No municipalities were involved in the defense of or prosecution of the cases we have reviewed. If individual businesses want to deny access to solicitors, they may do so by handling it as a civil action.

In brief, legal counsel has recommended that the Town may adopt an ordinance limiting signature gatherers to certain designated areas in reasonable proximity to where shoppers will pass by. It may also restrict them to gathering signatures only during certain times, on certain days, and even for a maximum number of days. It may also prohibit conduct which is harassing or offensive, such as verbal abuse of those who do not wish to participate with the signature gatherers.

Historically, complaints received by the Code Enforcement Department have not been related to blocking of entrances and exits or harassment of shoppers; the complaints that have been received have typically been received because the businesses don't want the signature gatherers on the property at all, regardless of the circumstance.

The Town Attorney does not recommend that an ordinance should be adopted that would prohibit signature gathering categorically, as it has been established that this is an acceptable activity in certain locations under certain circumstances.