

TOWN OF APPLE VALLEY, CALIFORNIA

AGENDA MATTER

Subject Item:

SOLICITATION/PETITION GATHERING IN FRONT OF BUSINESSES

SUMMARY STATEMENT:

During 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 businesses.

At the April 12, 2011 Town Council meeting, staff presented a report to the Town Council listing options to limit solicitors and petition gatherers from being in front of businesses where the businesses didn't want them present. Staff described the difficulty in writing and enforcing an ordinance that would categorically deny solicitors the opportunity to be present in front of businesses for the purpose of gathering signatures for a petition or soliciting.

The core issue is the First Amendment and the petition gatherers/solicitors right to free speech. Several court cases have made their way through the appeals process with decisions being reached on both sides of the argument. The court decisions varied depending on the different specific circumstances as to the layout, use, and type of location, plaza, or mall where the stores were located and whether or not the location was considered a quasi public gathering place.

The Town Council directed staff to review potential ordinance options with legal counsel as well as consult with law enforcement.

(Continued)

Recommended Action:

Provide direction to staff.

Proposed by: Jim Andersen, Code Enforcement Manager Item Number _____

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

Council Meeting Date: 7/12/11

12-1

Staff conducted a survey of other agencies to see how they handle complaints about petition gatherers/solicitors in front of businesses that did not want them present. Fifteen agencies responded, below are the results of the survey:

- Eight of the jurisdictions do not get involved with this issue and handle complaints as a civil matter between the business and the other party.
- Three agencies require solicitors and petition gatherers to obtain a solicitors permit. As part of the permitting process, an application is filled out. Once approved, the solicitor is issued a permit. The permit contains all of the information about the person and the company or non profit organization they represent. This permit becomes a public record.
- Two agencies send the complaints to the police department. The police will investigate to see if a crime has occurred.
- Two cities regulate the time, place and manner of petition gatherers/solicitors.

None of the respondents have ordinances that categorically prohibit soliciting or petition gatherers from being in front of businesses.

A representative from the San Bernardino County Sheriff's Public Affairs Division stated there is no official policy as to how the Sheriff's Department handles petition gatherer complaints. As a general rule, if the complaint is from a business owner who does not want a petition gatherer to be on the property gathering signatures, and there is no other crime or violation, the Sheriff's Department will not get involved. If there are other actions or behaviors that go along with the signature gathering that are criminal in nature, the Sheriff's Department will take appropriate action. If someone is simply gathering signatures, they will not accept a private persons arrest for trespassing.

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

Proposed Options:

1. Adopt an ordinance regulating the time, place, and manner of signature gatherers. The restrictions would be to keep the signature gatherers/solicitors in certain designated areas in reasonable proximity to where shoppers will pass by. It may also restrict them to certain times, on certain 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.

2. The Town Council can direct staff to draft an ordinance that would require solicitors/petition gatherers to obtain a solicitors permit before engaging in their activity.
3. Direct staff to issue third party citations (citizen's arrest) that would be signed by the business manager or owner. A citation would be issued when the manager or owner from the business has told the solicitor/petition gatherer to leave the property. Upon their refusal to leave, Code Enforcement would respond and fill out a misdemeanor notice to appear court citation for the violation of trespass by refusal to leave. The store owner or manager would sign the citation as the arresting person and once in court would act as prosecutor while the Town itself would not be pursuing a criminal complaint, limiting the liability exposure to the Town.
4. Any combination of the above three options.

I have been corresponding with Attorney Ruben Espinoza from Best, Best & Krieger discussing the issuing of third party citations. The City of Corona handles complaints of petition gatherers through a citizen's arrest for trespass by refusal to leave. The Police Department will issue a citation on behalf of a store as outlined in option #3 above. Corona has not experienced any negative impact from handling petition gatherer complaints using this process.

Staff was not able to find any jurisdictions that have an ordinance specifically and categorically prohibiting solicitation/petition gathering and the Town legal council advises against doing so.