

Message from Mayor Leticia- on the new Solicitation Law

Dear Neighbors:

I would like to provide a timeline and overview regarding our new Solicitation Law that has been officially filed with the Department of State.

Back in June our Village Attorney Bruce Migatz received a letter from a law firm representing an exterminating company called Aptive Environmental that solicit door to door for their business. The letter indicated that the Village suspend enforcement of its current solicitation law immediately because it violates the First and Fourteenth amendment of the US Constitution. The letter threatened legal action if the Village did not comply and documented recent legal actions and decisions against other Villages. The Village suspended its current solicitation law immediately and at our August meeting we put forth a resolution to hold a public hearing in September and began crafting an amended new solicitation law.

On September 10th, the Village adopted its new solicitation law. The new law reaches a balance between protecting the privacy of the Village residents and includes regulations that the courts will allow. The new law allows soliciting between the hours of 9am to dusk, but solicitation is prohibited on properties that have posted a “no soliciting” sign. Solicitors who enter a property that is properly posted are subject to fines. To make it easier for our residents, the Village has made self adhesive “no soliciting” signs that are available at Village Hall and the Police Department. These signs can be placed on your mailbox, garage, gate or front door. The sign should be clearly visible. The Village Police Department will be vigilant looking for cars parked in the Village. Should you have a solicitor come to your home and your property is properly posted, please call the police at 631-261-7400.

In an effort to help everyone understand how the Village crafted this new law, below are points that our Village Attorney, Bruce Migatz made at our September 10th meeting.

Attorney Migatz’s objective to drafting the amended law was to create a “stop gap” measure; the law can be revised as events change in the future. The company Aptive is very litigious company that started several actions in Pennsylvania, Colorado, and New York and under the federal statute the prevailing party has a right to attorney fees. In Colorado the Town of Castle Rock litigated in court and refused to modify their law, they lost and the court awarded Aptive legal fees of \$481,958.00 plus additional costs of \$47,906.96. The Village of Floral Park received the same letter as Asharoken and decided not to suspend their law, they were faced with an order to show cause, and a restraining order was issued; Aptive won, Village of Floral Park had to pay \$15,000.00 in legal fees. The village’s code chapter 91 “Solicitation” was drafted in 1956 when commercial speech was not recognized as being protected by the constitution. Therefore our Attorney recommended immediately a moratorium on Chapter 91 to protect the village from any possible lawsuits.

Today the courts allow for reasonable restrictions on commercial speech, which is why the drafted proposed Solicitation law includes similar restrictions to follow what the court allows.

Hours of Operation: The law restricts the hours of solicitation between 9am and dusk (dusk is defined as 30 minutes after sunset) In the East Rockaway case; they had a restriction of 9am to 5pm in their local law which was challenged and it was decided by Federal Courts on July 16th 2019; prohibiting 9am to 5pm restriction. If Aptive challenges our hours it would go to the same court;

the court disallowed between 9am to 5pm but the courts decided that 9am to Dusk was reasonable; so that's why the proposed local law includes those times.

Licensing Provision: The East Rockaway local law had a licensing provision; Aptive challenged this and the court prohibited enforcement of the licensing provision. This enforcement is preliminary; until we learn of future changes made by the court, our Attorney has recommended having no licensing provisions in the proposed local law in order to protect the village. Other cases will be monitored to find out the outcome. We are also hoping the court will provide some guidance on what type of licensing is considered reasonable.

List of "No Knock" homes: Attorney Migatz explained that he did not include this in the proposed local law for two reasons; one if Aptive and others are not going to obey the "No Knock" sign on the door they are not going to pick up a list; secondly he noted that Aptive can claim that this is a form of licensing.

Posting a Sign: A "No Knock" provision allows anybody to post a sign ("No knocking" or No Solicitation") at the entrance of their property or on their door. Anyone who tries to enter the property is entering illegally and the property owner has the right to call the police department.

Fortunately, soliciting has never been a problem in the Village and we expect that going forward the situation will not be any different. To view the draft minutes for the September 10th public hearing: go to www.asharoken.com.

Best regards;

Mayor Greg Letica