

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

April 21, 2008

CALL TO PODIUM:

Greg Ossont

RESPONSIBLE STAFF:

Greg Ossont, Director,
Planning & Code Administration

Lynn Board, City Attorney

AGENDA ITEM:

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input checked="" type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	04/21/2008
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:
An Emergency Ordinance to Repeal and Reenact With Amendments Chapter 15 of the City Code, Section 15-9, Entitled "Solicitation in Roadways," so as to Amend Existing Language With Regard to the City's Prohibition on Solicitation in Roadway Median Areas

SUPPORTING BACKGROUND:
The previously adopted ordinance which amended Section 15-4 and 15-9 of the City Code has been determined to be unenforceable. Although not directly related to the problematic aspects of the existing ordinance, the prohibition of soliciting in the median was included in the ordinance. As a result, the City does not have a current mechanism for prohibiting soliciting in roadway medians.
Upon review, staff determined that Section 15-9 of the existing ordinance should be repealed and reenacted. Additionally, it was noted that soliciting in roadways is preempted by a State law prohibiting the same. As such, the proposed ordinance would replace existing language to prohibit soliciting in the medians only. The title has been changed as well.
In the event that the ordinance is adopted, staff believes it would be appropriate to include an "editor's note" in the next publishing of the City Code which makes reference to the State law prohibiting soliciting in roadways.

DESIRED OUTCOME:
Introduce ordinance. Staff anticipates a public hearing on May 5, 2008 and policy discussion on May 19, 2008.

ORDINANCE NO. O-x-08

AN EMERGENCY ORDINANCE TO REPEAL AND REENACT WITH AMENDMENTS
CHAPTER 15 OF THE CITY CODE, SECTION 15-9, ENTITLED "SOLICITATION IN
ROADWAYS," SO AS TO AMEND EXISTING LANGUAGE WITH REGARD TO
THE CITY'S PROHIBITION ON SOLICITATION IN ROADWAY MEDIAN AREAS

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that certain sections of Chapter 15 of the City Code, are hereby repealed and reenacted with amendments to read as follows:

Chapter 15

OFFENSES – MISCELLANEOUS

Sec. 15-9. Solicitation in [[roadways]] **medians**, prohibited.

It shall be unlawful for any person to stop, stand, walk or otherwise enter the [[drive lanes of any public roadway or a]] median area separating the drive lanes of a public roadway for the purpose of soliciting donations, alms, subscriptions, employment or business from the occupant of any motor vehicle.

[[Sec. 15-9 Solicitation in Roadways

(a) *Findings*

(1) The City Council finds that increased solicitation, as defined herein, by pedestrians and vehicle drivers, has caused a significant attendant increase in safety hazards within the City.

(2) Pedestrians' engaging in such soliciting from occupants of vehicles distracts drivers from their primary duty to watch traffic and be alert for potential hazards in the roadways; to observe all traffic control signs and to be prepared to move through the City safely; results in the delay and obstruction of the public's free flow of travel; and results in congestion and blockage of the streets, parking area, driveways, and sidewalks.

(3) Such soliciting by occupants of vehicles to pedestrians on roadways, sidewalks, driveways, parking areas, or alleys distracts drivers from their primary duty to watch other vehicles or pedestrians and to move through the City safely, and can cause pedestrians to enter travel lanes creating additional hazards.

(b) *Purpose and Intent*

It is the purpose and intent of this Ordinance to provide a mechanism to ensure the safety and well being of pedestrians, vehicle drivers and solicitors while occupying roadways, sidewalks, driveways, parking areas or alleys within the City by prohibiting the conduct which creates significant traffic and pedestrian safety hazards.

(c) *Definitions.*

Words not defined in this Chapter shall have the meaning ascribed by the City code, and if not included in the City code, shall have their ordinary and customary meaning.

1. *Solicit/attempt to solicit:* For purposes of this Chapter only, solicit or attempt to solicit shall be defined as and/or include the act of requesting, announcing, or offering, by any means, the availability for or the availability of employment; any action which seeks to offer, contract for, purchase, sell, or procure employment; any request for money or other property; any attempt to contribute money or other property. The following acts may indicate a solicitation as defined in this Chapter: approach between or among individuals; participation in discussions undertaken in response to the solicitation by another person; departing the place of approach together; utilization of a vehicle in the approach or departure. Conduct as defined herein may be deemed to be a solicitation, whether or not an actual employment relationship is created, or money or other property is actually contributed. Solicitation as defined in this Chapter does not include any activity conducted within or in accordance with the procedures of a lawfully approved formal assembly site for day workers, or other lawfully approved employment center use, issued a use and occupancy permit.

2. *Employment center:* an established location, issued a use and occupancy permit, where employment opportunities are coordinated between persons seeking employment and persons seeking to hire persons for employment.

3. *Employment:* services, industry, or labor performed by a person for wages, a fixed sum, other compensation or thing of value, under any contract for hire, whether oral, written, express or implied.

4. *Donation:* unilateral gift of money or other thing of value without an expectation of receiving goods, services or thing of value in return.

5. *Alms:* charitable donations for the relief of the poor.

6. *Subscriptions:* binding pledge or commitment.

(d) Prohibited Conduct

1. It shall be unlawful for any person, while occupying as a pedestrian any portion of a public or private roadway, sidewalk, driveway, parking area, or alley, including drive lanes, medians and curbs, to solicit or attempt to solicit employment, donations, alms or subscriptions, from any pedestrian who temporarily exits a vehicle, or from any person occupying or traveling in a vehicle, on a roadway, sidewalk, driveway, parking area, or alley.

2. It shall be unlawful for any person occupying or traveling in a vehicle, or who temporarily exits a vehicle, to solicit or attempt to solicit employment, donations, alms or subscriptions, from a person who is a pedestrian on a public or private roadway, sidewalk, driveway, parking area, or alley, including drive lanes, medians and curbs.

(e) Severability

If any word, sentence, paragraph, or other portion of this ordinance is deemed to be invalid or unenforceable for any reason by a court of competent jurisdiction, the City Council declares its intent that all remaining words, sentences, paragraphs or portions of the ordinance not held to be invalid or unenforceable shall remain in full force and effect, and shall be so construed, as if the original ordinance did not contain the invalid or unenforceable language.

(f) Effective Date

This ordinance will not go into effect until an employment center, located either within the City of Gaithersburg or in an area of Montgomery County, Maryland proximate to the City's corporate boundaries, in accordance with the laws and requirements of the respective jurisdiction, is open and operating on a regular schedule.]]

ADOPTED this 19th day of May, 2008 by the City Council of Gaithersburg, Maryland.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 19th day of May, 2008. APPROVED by the Mayor of the City of Gaithersburg, this 19th day of May, 2008.

SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the 19th day of May, 2008, and that the same was approved by the Mayor of the City of Gaithersburg on the 19th day of May, 2008. This ordinance will become effective in accordance with the provisions of this ordinance.

James D. Arnoult, Acting City Manager

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>