

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

January 22, 2008

**CALL TO PODIUM:**

**James D. Arnout**  
**Acting City Manager**

**RESPONSIBLE STAFF:**

**James D. Arnout**  
**Acting City Manager**

**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 type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input checked="" type="checkbox"/>	Other: <b>From Acting CM</b>

**PUBLIC HEARING HISTORY:**

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

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

**TITLE:**

Update on Status of the City's Request for an Attorney General Opinion on the Constitutionality of the Anti-Solicitation Ordinance.

**SUPPORTING BACKGROUND:**

During the January 7, 2008 meeting, the Mayor and City Council directed staff to prepare a letter to Attorney General Gansler requesting an update on the status of the Attorney General opinion on the constitutionality of the City's Anti-Solicitation Ordinance. For your review, I have attached a copy of this letter.

On January 17, 2008, Mayor Katz received the attached letter from Chief Counsel Robert N. McDonald. This letter indicates that the Attorney General's Office is in the process of editing and reviewing the draft opinion, and that they expect the process to be complete within the next three or four weeks.

**DESIRED OUTCOME:**

**Receive update.**



January 9, 2008

The Honorable Douglas F. Gansler  
Maryland Attorney General  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

Re: Attorney General Opinion

Dear Attorney General Gansler:

We wrote you on May 15, 2007 requesting your opinion on the constitutionality of Gaithersburg City Ordinance O-4-07 (anti-solicitation ordinance). This ordinance was passed to address safety concerns associated with individuals soliciting in and near public rights-of-way. For your review, we have attached a copy of this letter.

Due to concerns expressed by the State's Attorney's Office, the City Council has extended the effective date of this ordinance on four occasions pending an opinion from your office as to the constitutionality of the measure.

The purpose of this letter is to respectfully request that the opinion be issued as soon as possible so the City may either begin enforcing the ordinance or consider other measures to address our safety concerns. Additionally, we are requesting that your office provide us with an estimated date as to when the opinion will be issued.

Your ongoing assistance is greatly appreciated. If you have any questions, please feel free to contact me or Acting City Manager James Arnoult at 301-258-6310.

Sincerely,



Sidney A. Katz  
Mayor

FJF/ms  
Enclosure

cc: City Council  
James D. Arnoult, Acting City Manager  
Cathy G. Borten, Esquire

City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098  
301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@gaitersburgmd.gov • www.gaitersburgmd.gov

MAYOR  
Sidney A. Katz

COUNCIL MEMBERS  
Jud Ashman  
Cathy C. Drzyzgula  
Henry F. Marraffa, Jr.  
Ryan Spiegel  
Michael A. Sesma

ACTING CITY MANAGER  
James D. Arnoult

**DOUGLAS F. GANSLER**  
*Attorney General*



**KATHERINE WINFREE**  
*Chief Deputy Attorney General*

**JOHN B. HOWARD, JR.**  
*Deputy Attorney General*

[bmcdonald@oag.state.md.us](mailto:bmcdonald@oag.state.md.us)

**E-Mail**

**(410) 576-7036**  
TELECOPIER NO.

**STATE OF MARYLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

**(410) 576-6327**  
WRITER'S DIRECT DIAL NO.

January 15, 2008

The Honorable Sidney A. Katz  
Mayor, City of Gaithersburg  
31 South Summit Avenue  
Gaithersburg, Maryland 20877-2098

JAN 17 2008

Dear Mayor Katz:

I am writing in response to your January 9 letter to Attorney General Gansler.

I apologize for the delay in providing a response to your opinion request. Unfortunately, we have many competing requests from our State agency clients. Because the City's ordinance implicates important constitutional issues that can be difficult to resolve, we are trying to provide as thorough response as we can. While the City Attorney provided a well written opinion together with your request, it has been necessary to undertake our own research. For example, I understand that the City's ordinance is based on a Virginia law that was initially upheld but later overturned by the courts in that State. As you may know, one of our lawyers has been working on a draft opinion and has been in communication with the City Attorney about some of the legal issues he encountered. I now have a draft that must undergo the editing and review process that all of our opinions undergo. I hope that we can complete that process within the next three or four weeks.

Very truly yours,

A handwritten signature in black ink that reads "Robert N. McDonald".

Robert N. McDonald  
Chief Counsel  
Opinions and Advice