

CITY OF BALTIMORE
RESOLUTION _____
Council Bill 14-0382

Introduced by: Councilmembers Kraft, Stokes, Henry, Clarke, Welch, Branch

Introduced and read first time: May 12, 2014

Assigned to: Judiciary and Legislative Investigations Committee

Committee Report: Favorable

Council action: Adopted

Read second time: July 17, 2014

A RESOLUTION OF THE MAYOR AND CITY COUNCIL CONCERNING

Charter Amendment – Minor Privileges

FOR the purpose of amending the provisions regulating franchises to authorize the Mayor and City Council to regulate, by local law, minor privileges and the issuance of minor privilege permits; defining certain terms; conforming, correcting, and clarifying related language governing franchises; and submitting this amendment to the qualified voters of the City for adoption or rejection.

By proposing to amend

Article VIII - Franchises

In its entirety

Baltimore City Charter

(1996 Edition)

SECTION 1. BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the City Charter is proposed to be amended to read as follows:

Baltimore City Charter

Article VIII. Franchises

§ 1. DEFINITIONS.

(A) *IN GENERAL.*

IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

(B) *FRANCHISE.*

(1) *GENERAL.*

“FRANCHISE” MEANS, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE GRANT OF A PRIVATE RIGHT IN OR RELATING TO THE USE OF ANY PUBLIC PROPERTY REFERRED TO IN § 2 OF THIS ARTICLE.

EXPLANATION: Underlining indicates matter added by amendment.
~~Strike out~~ indicates matter stricken by amendment.

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1 (2) *EXCLUSION.*

2 “FRANCHISE” DOES NOT INCLUDE A MINOR PRIVILEGE THAT HAS BEEN AUTHORIZED BY
3 A CITY STATUTE OR OTHER LAW ENACTED BY THE MAYOR AND CITY COUNCIL UNDER
4 THE AUTHORITY OF § 11 OF THIS ARTICLE.

5 (C) *MINOR PRIVILEGE.*

6 (1) *GENERAL.*

7 “MINOR PRIVILEGE” MEANS A PRIVATE RIGHT IN OR RELATING TO THE USE OF ANY
8 PUBLIC PROPERTY REFERRED TO IN § 2 OF THIS ARTICLE THAT:

- 9 (I) IS GRANTED UNDER A CITY STATUTE OR OTHER LAW ENACTED BY THE MAYOR
10 AND CITY COUNCIL UNDER THE AUTHORITY OF § 11 OF THIS ARTICLE; AND
11 (II) THE EXERCISE OF WHICH DOES NOT PRODUCE A SIGNIFICANT OR SUBSTANTIAL
12 BURDEN ON THE PROPERTY, AS DETERMINED IN ACCORDANCE WITH THE
13 GOVERNING CITY STATUTE OR OTHER LAW.

14 (2) *ILLUSTRATIONS.*

15 “MINOR PRIVILEGE” INCLUDES, BUT IS NOT LIMITED TO, THE RIGHT TO USE PUBLIC
16 PROPERTY FOR:

- 17 (I) STEPS;
18 (II) COLUMNS OR PORTICOES;
19 (III) BAY WINDOWS, BOW WINDOWS, OR SHOW WINDOWS;
20 (IV) SIGNS;
21 (V) PIERS;
22 (VI) COVERED VAULTS OR COVERED AREAWAYS;
23 (VII) DRAINS OR DRAINPIPES; OR
24 (VIII) OTHER PROJECTIONS OR STRUCTURAL ORNAMENTS OF ANY CHARACTER.

25 **§ 2. [§ 1. Authority to grant.] CITY’S TITLE TO CERTAIN PROPERTY INALIENABLE.**

26 The CITY’S title [of the City] in and to its STREETS, LANES, PARKS, waterfront, wharf property,
27 land under water, public landings, wharves, and docks[, streets, lanes, and parks,] is [hereby
28 declared to be] inalienable.

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§ 3. AUTHORITY TO GRANT FRANCHISE.

(A) IN GENERAL.

The City may grant, for a limited time and subject to the limitations and conditions contained in [the Charter] THIS ARTICLE, specific franchises [or rights] in or relating to THE USE OF any [of the] public property [or places mentioned] REFERRED TO in [the preceding sentence] § 2 OF THIS SECTION[;], [provided that such] AS LONG AS:

(1) THE grant is in compliance with the requirements of [the Charter,] THIS ARTICLE; and

(2) [that] the terms and conditions of the grant [shall] have first been authorized and set forth in an ordinance [duly adopted] OF THE MAYOR AND CITY COUNCIL, AS PROVIDED IN § 4 OF THIS ARTICLE.

(B) SPECIFICITY REQUIRED.

Every [such] grant OF A FRANCHISE shall specifically set forth and define the nature, extent, and duration of the franchise [or right thereby granted], and no franchise [or right shall] MAY pass by implication under [any such] THE grant[;].

(C) CITY'S RETAINED RIGHTS.

[and, notwithstanding] NOTWITHSTANDING any [such] grant OF A FRANCHISE, the City:

(1) [shall] HAS AND RETAINS at all times [have and retain] the power and right to reasonably regulate in the public interest the exercise of the franchise [or right] so granted; and

(2) [the City shall] DOES not have the power by grant or ordinance to divest itself of [the] ITS right or power [so] to regulate IN THE PUBLIC INTEREST the exercise of [such] THE franchise [or right].

§ 4. Procedures; compensation; minor privileges].

(A) CONTENTS OF ORDINANCE.

[Whenever an] A PROPOSED ordinance [is] TO GRANT A FRANCHISE SHALL, WHEN introduced into the City Council, [pursuant to the provisions of Section 1 of this Article VIII, which ordinance shall] contain all the terms and conditions of the proposed grant, including:

(1) a provision as to the rates, fares, and charges, if the grant provides for the charging of rates, fares, or charges[.]; and

(2) a provision that the franchise [or right] shall be executed and enjoyed within [six] 6 months [after] OF the grant[.].

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1 (B) *REFERRAL TO BOARD OF ESTIMATES.*

2 (1) [it shall, after the] AFTER ITS first reading, THE PROPOSED ORDINANCE SHALL be
3 referred forthwith to the Board of Estimates.

4 (2) The [said] Board OF ESTIMATES shall [make diligent inquiry as to] DILIGENTLY
5 INQUIRE INTO:

6 (I) the money value of [said] THE franchise [or right] proposed to be granted and
7 the adequacy of the [proposed] compensation to be paid [therefor] to the City
8 as offered in [said] THE ordinance[.]; and

9 (II) the propriety of the OTHER terms and conditions of [said] THE PROPOSED
10 ordinance[.].

11 (3) [and said board] THE BOARD OF ESTIMATES is empowered to:

12 (I) increase the compensation to be paid [therefor] to the City; and

13 (II) [to] alter the terms and conditions of [said] THE ordinance, including the space
14 in, ON, or over which the franchise [or right] is proposed to be granted and the
15 person to whom the franchise [or right] shall be granted, [provided such] AS
16 LONG AS THE alterations are not inconsistent with the [requirements and]
17 provisions of [the Charter] THIS ARTICLE[.].

18 (4) [and it shall be] IT IS the BOARD'S duty [of said Board] to fix [in said ordinance] the
19 [said] compensation at the largest amount it [may be] IS able to obtain, by advertising
20 or otherwise[, for said franchise or right].

21 (C) *REQUISITES FOR APPROVAL.*

22 (1) [and no] NO grant [thereof] OF ANY FRANCHISE [by the City Council shall] MAY be
23 made except for the compensation and on the terms AND CONDITIONS approved by
24 vote or resolution of the [said] THE Board OF ESTIMATES, entered in the minutes or
25 records of [said] THE Board and attached to [said] THE ordinance, with the [signature]
26 SIGNATURES of a majority of [said] THE Board [signed thereto].

27 (2) [and in] IN the absence of [such vote or resolution] THE BOARD'S APPROVAL, [of said
28 Board said] THE proposed ordinance may not be passed but shall lapse and be void.

29 [Provided, that the right to use the streets, or other public property, by any person for steps,
30 porticoes, bay windows, bow windows, show windows, signs, columns, piers, or other
31 projections or structural ornaments of any character except so far as the same may be
32 prohibited by law, and covered vaults, covered areaways, drains, drainpipes, or any other
33 private purpose not prohibited by law or ordinance and not being a franchise or right
34 requiring a formal grant by ordinance, may be granted by the Board of Estimates for such an
35 amount of money and upon such terms as the said Board may consider right and proper
36 without the necessity of an ordinance or advertising. The applicant for any such right shall
37 make written application therefor to the Board of Estimates, stating therein the use desired
38 and the amount he proposes to pay therefor. Before filing the application with the Board of

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1 Estimates, the applicant shall serve copies thereof on the owners of the adjoining properties.
2 The use applied for shall be enjoyed only on the payment of the consideration fixed by said
3 Board and on the terms and conditions prescribed by it in writing, which terms and
4 conditions, including the consideration charged therefor, may be changed from time to time
5 by the Board – but with respect to “permanent” minor privileges, as defined in Section 9 of
6 this Article VIII of the Charter, only after reasonable notice to the holder of the privilege and
7 opportunity to him to be heard before the Board or its designated representative – and
8 provided further, that all grants of minor privileges shall also be subject to the provisions of
9 said Section 9 of this Article VIII. The Board of Estimates may delegate to any department
10 or other municipal agency, and such department or other municipal agency shall exercise, any
11 administrative powers and duties relating to minor privileges.]

12 **§ 5. [§ 3.] Duration; TERMINATION.**

13 (A) *MAXIMUM TERM AND RENEWALS.*

14 (1) No franchise [or right in relation to any street, either on, above, or below the surface
15 of the same, or franchise or right with respect to any other public property, shall] MAY
16 be granted [by the City] to any person for a longer period than [twenty-five] 25
17 years[.].

18 (2) [but such] HOWEVER, AT THE OPTION OF THE CITY, THE INITIAL grant may[, at the
19 option of the City,] provide for giving to the grantee the right (on fair revaluation,
20 including in [such] THAT revaluation the value derived from the [said] franchise [or
21 right]) to renewals THAT, IN THE AGGREGATE, DO not [exceeding] EXCEED [in the
22 aggregate twenty-five] 25 years.

23 (B) *TERMS OF RENEWAL MAY DIFFER.*

24 Regardless of the number of previous grants of a given franchise to [its holder,] A
25 GRANTEE or the number of years [such] THAT THE [holder] GRANTEE [may have] HAS held
26 the [same] FRANCHISE, the City may renew the [same to him] FRANCHISE on the same or
27 different terms AND CONDITIONS from [that theretofore] THOSE PREVIOUSLY granted,
28 including an increase or decrease of the consideration or charge [therefor,] FOR THE
29 FRANCHISE.

30 [provided always, no grant by the City of a franchise or right in, over, or under any part of its
31 public property, whether an original grant or a renewal thereof, shall (save for a possible
32 provision for renewals in accordance with the first sentence of this section) create a term
33 therefor or a right to obtain a renewal of said term extending more than twenty-five years
34 from the date of the ordinance granting or renewing the same, as the case may be.]

35 (C) *TERMINATION; DISPOSITION OF GRANTEE’S PROPERTY.*

36 (1) (i) Any grant of a franchise may provide that, [upon] ON the termination of the [said]
37 franchise [or right granted by the City], the GRANTEE’S plant[, as well as the] AND
38 OTHER property [of the grantee] situated in, above, or under the streets or other
39 public property [aforesaid], with its appurtenances, shall [thereupon] be and
40 become the property of the City, without further or other compensation to the
41 grantee[;].

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1 (ii) [or such] ALTERNATIVELY, THE grant may provide that, [upon such determination]
2 ON TERMINATION, there shall be a fair valuation of the plant and OTHER property,
3 which shall be and become the property of the City, at its election, on paying the
4 VALUATION TO THE grantee [said valuation].

5 (2) If, by virtue of the grant, the plant and OTHER property are to become the property of
6 the City without [money payment therefor] COMPENSATION TO THE GRANTEE, the City
7 shall have the option TO either:

8 (i) [to] take and operate the [said] property on its own account[.]; [or]

9 (ii) [to] renew the [said] grant, ON REVALUATION, for not exceeding [twenty-five]
10 25 years [on a revaluation]; or

11 (iii) sell the [same] PROPERTY AT PUBLIC SALE to the highest bidder [at public sale].

12 (3) If the original grant [shall prescribe] PRESCRIBES that the City shall, at its election,
13 make payment for [such] THE plant and OTHER property[.]:

14 (i) [such] THE payment shall be at a fair valuation of the [same as] property,
15 excluding any value derived from the franchise [or right]; and

16 (ii) if the City [shall make payment] PAYS for [such plant and] THE property, it
17 may, in that event, operate the plant and property on its own account for [five]
18 5 years, after which it may determine TO either:

19 (A) [to] continue [such] THE operation on its own account; [or]

20 (B) [to] lease the [said] THE plant and property, [and the said] TOGETHER
21 WITH THE franchise [or right to use the streets, or other public property
22 in connection therewith], for limited periods, not to exceed [twenty-
23 five] 25 years from the date of the grant, under such rules and
24 regulations as it [may prescribe] PRESCRIBES[.]; or

25 (C) to sell the plant and property AT PUBLIC SALE to the highest bidder [at
26 public sale].

27 **§ 6. ADDITIONAL PROVISIONS REQUIRED FOR GRANT.**

28 (A) *COMPELLING COMPLIANCE, SECURING EFFICIENCY, AND MAINTAINING GOOD CONDITION.*

29 Every grant of [any such] A franchise [or right] shall make provision, by way of forfeiture
30 or otherwise, for [the purpose of] compelling compliance with the terms of the grant, [and
31 to secure] SECURING efficiency of public service at reasonable rates, and the maintenance
32 of the property in good condition, throughout the full term of the grant.

33 (B) *DETERMINING VALUATIONS AND REVALUATIONS.*

34 The grant shall also specify the mode of determining the valuations and revaluations
35 [which] THAT may be [provided for therein] REQUIRED.

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1 § 7. [§ 4.] Street railways.

2 The Board of Estimates, subject to ratification and approval by ordinance, is empowered to
3 agree with any street railway company for the surrender of any of its franchises, easements, or
4 rights-of-way, and in substitution for the franchise, easement, or right-of-way [so
5 surrendered] to grant a new franchise, easement, or right-of-way on any street, [and] which
6 may be for the same duration as the franchise, easement, or right-of-way surrendered; and to
7 provide, in appropriate cases, for a graduated park tax, as prescribed by Chapter 566 of the
8 Acts of the General Assembly of 1906.

9 § 8. [§ 5.] Trackless trolleys.

10 The City may, by ordinance, permit any street railway company to operate, under its existing
11 franchises, vehicles propelled by electricity furnished by overhead wires but not operated
12 upon rails, and any such grant heretofore made is hereby ratified and confirmed.

13 § 9. [§ 6.] Advertising.

14 Before any grant of [the franchises or right to use any street, or other public property, either
15 on, above or below the surface of the same shall] A FRANCHISE MAY be made, the proposed
16 specific grant, [except as provided in the second paragraph of Section 2 of this Article VIII,]
17 embodied in the form of a brief advertisement prepared by the Board of Estimates, at the
18 expense of the applicant, shall be published by the Comptroller for at least [three] 3 days in
19 one daily newspaper published in Baltimore City, to be designated by the Board of
20 Estimates[, and all the provisions of the first paragraph of Section 2 of this Article VIII shall
21 be complied with].

22 [§ 7. Reservation of rights.]

23 [When the grant of a franchise or right is made in compliance with the foregoing sections, the
24 City shall not part with, but shall expressly reserve, the right and duty at all times to exercise
25 in the interest of the public full municipal superintendence, regulation, and control in respect
26 to all matters connected with said grant and not inconsistent with the terms thereof.]

27 § 10. [§ 8.] Renewals.

28 [Sections 1, 2, 3, 6, and 7] §§ 1 - 6 AND 9 - 11 of this [Article VIII shall] ARTICLE apply to
29 any renewal [or extension] of a franchise, whether to the same grantee or to others.

30 [§ 9. Minor privileges.]

31 [(a) *Temporary minor privilege charges.*

32 Beginning with the year 1935, the amount of the lien of the City for charges for
33 temporary minor privileges, as hereinafter defined, shall be limited to the amount of the
34 charge therefor for the last calendar year for which made. The person to whom such
35 temporary minor privilege is granted shall be personally liable to the City for the amount
36 of such charges. If any such charge is not paid by April 1st of the year succeeding that in
37 respect of which the charge was made, the Department of Finance shall record the lien for
38 such previous year's charge in the tax lien record, where it shall continue to be a lien,
39 until paid, upon the property on which such minor privilege is located. The Department of

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1 Finance may proceed to enforce the liability above provided for or to sell the property in
2 satisfaction of such lien under the provisions of Article 81 of the Code of Public General
3 Laws of Maryland.]

4 [(b) *“Temporary” and “permanent” defined; procedures.*

5 Temporary minor privileges are those in the nature of awnings, barber poles, signs, skids,
6 clothes racks, sidewalk displays and vending machines and the like, which can be
7 removed without a material alteration of the property where the said privilege is located.
8 Permanent minor privileges are those in the nature of steps, porticoes, bay windows, bow
9 windows, show windows, columns, tiers, covered vaults, covered areaways, drains or
10 drainpipes, and the like which cannot be removed without a material alteration of the
11 property where the said privilege is located. The procedure for granting minor privileges
12 is set forth in Section 2 of this Article VIII.]

13 [(c) *Savings clause.*

14 Nothing contained in this section shall affect the payment or collection of any minor
15 privilege charges, temporary, or permanent, accruing before the year 1935 or the payment
16 or collection of charges for permanent minor privileges during and after the year 1935.
17 As to any of such charges which are not paid when due, the Department of Finance may
18 institute suit against the holder of the privilege and the owner of the property at the time
19 the charge arose, and shall record them in the tax lien record, and they shall remain a lien
20 until paid and may sell the property at which the privilege is located under the provisions
21 of said Article 81.]

22 [(d) *Designation by Board of Estimates.*

23 In issuing minor privileges the Board of Estimates shall designate the same as being
24 “temporary” or “permanent” as defined in this section.]

25 **§ 11. MINOR PRIVILEGES.**

26 NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE MAYOR AND CITY COUNCIL
27 IS EMPOWERED TO ENACT CITY STATUTES AND OTHER LAWS TO GOVERN AND REGULATE THE
28 GRANT OF MINOR PRIVILEGES, INCLUDING THEIR DURATION, APPLICABLE CHARGES AND FEES,
29 AND ALL OTHER TERMS AND CONDITIONS BY WHICH MINOR PRIVILEGES ARE AUTHORIZED,
30 PROCESSED, AND GRANTED.

31 **SECTION 2. AND BE IT FURTHER RESOLVED,** That this proposed amendment to the City
32 Charter be submitted to the legal and qualified voters of Baltimore City, for adoption or rejection,
33 in accordance with Article XI-A, § 5 of the Maryland Constitution, in the form specified by the
34 City Solicitor.

35 **SECTION 3. AND BE IT FURTHER RESOLVED,** That if this amendment is approved by the
36 voters, the amendment takes effect on the later of: (i) the date on which this amendment is
37 approved., and (ii) the date on which an Ordinance enacted to implement the authority granted by
38 City Charter Article VIII, § 11, as added by this Resolution, becomes effective.

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Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,
this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City