CITY OF BALTIMORE COUNCIL BILL 05-0034 (First Reader)

Introduced by: The Council President

At the request of: The Administration (Office of Neighborhoods)

Introduced and read first time: February 14, 2005

Assigned to: Judiciary and Legislative Investigations Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Department of Public Works, Department of Finance, Police Department, Fire Department, Office of Neighborhoods, Environmental Control Board, Department of Housing and Community Development, Department of Transportation, Board of Estimates

A BILL ENTITLED

1	An Ordinance concerning
2	Gating Alleys
3	FOR the purpose of establishing standards and procedures for the gating of alleys; requiring
4	certain petitions, consents, reviews, notices, and hearings; specifying certain minimum
5 6	requirements for a lease of a gated area; authorizing administrative and judicial reviews of certain decisions; defining certain terms; and generally relating to the gating and leasing of
7	alleys under the authority of City Charter Article II, § 35(e) and (f).
8	By adding
9	Article 26 - Surveys, Streets, and Highways
10	Section(s) 8A-1 through 8A-10, to be under the new subtitle,
11	"Subtitle 8A. Gating Alleys"
12	Baltimore City Code
13	(Edition 2000)
14	SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the
15	Laws of Baltimore City read as follows:
16	Baltimore City Code
17	Article 26. Surveys, Streets, and Highways
18	SUBTITLE 8A. GATING ALLEYS
19	§ 8A-1. DEFINITIONS.
20	(A) IN GENERAL.
21	IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

EXPLANATION: CAPITALS indicate matter added to existing law. [Brackets] indicate matter deleted from existing law.

1	(B) DIRECTOR.
2 3	"DIRECTOR" OR "DIRECTOR OF PUBLIC WORKS" MEANS THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS OR THE DIRECTOR'S DESIGNEE.
4	§ 8A-2. In general.
5	(A) Scope.
6 7	This subtitle governs the procedures for gating and leasing alleys under the authority of City Charter Article II, \S 35(e) and (f).
8	(B) STANDARD.
9 10 11	THE DIRECTOR OF PUBLIC WORKS MAY AUTHORIZE THE GATING OF AN ALLEY IF, ON PETITION, PUBLIC NOTICE, AND HEARING AS PROVIDED IN THIS SUBTITLE, THE DIRECTOR DETERMINES THAT:
12 13	(1) THE ALLEY IS NO LONGER NEEDED FOR THROUGH PEDESTRIAN OR VEHICULAR TRAFFIC; AND
14	(2) THE GATING WILL PROMOTE THE PUBLIC HEALTH, SAFETY, OR WELFARE.
15	(C) RULES AND REGULATIONS.
16 17	(1) THE DIRECTOR OF PUBLIC WORKS SHALL ADOPT RULES AND REGULATIONS TO CARRY OUT THIS SUBTITLE.
18 19 20	(2) These rules and regulations may set reasonable fees to cover the costs incurred by the Department of Public Works in processing a Gating Petition under this subtitle.
21 22	(3) A COPY OF THESE RULES AND REGULATIONS MUST BE FILED WITH THE DEPARTMENT OF LEGISLATIVE REFERENCE BEFORE THEY TAKE EFFECT.
23	§ 8A-3. RECORD OF ABUTTING OWNERS.
24 25 26 27	AT THE REQUEST OF ANY PERSON INTERESTED IN THE GATING OF AN ALLEY, THE DEPARTMENT OF PUBLIC WORKS SHALL PROVIDE THAT PERSON WITH A LIST OF THE NAMES AND ADDRESSES, AS THEN SHOWN ON THE DEPARTMENT'S RECORDS, OF THE OWNERS OF ALL PROPERTIES ABUTTING THAT ALLEY.
28	§ 8A-4. PETITION BY ABUTTING OWNERS – GENERAL.
29	(A) IN GENERAL.
30 31	TO INITIATE A PROCEEDING UNDER THIS SUBTITLE, A GATING PETITION MUST BE SUBMITTED TO THE DIRECTOR OF PUBLIC WORKS.

1	(B) FORM.
2 3	THE GATING PETITION MUST BE IN THE FORM AND CONTAIN THE INFORMATION THAT THE DIRECTOR REQUIRES.
4	§ 8A-5. PETITION BY ABUTTING OWNERS – CONSENTS.
5	(A) IN GENERAL.
6 7 8 9	(1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE GATING PETITION MUST BE ACCOMPANIED BY THE SIGNED CONSENTS OF ALL OF THE OWNERS OF ALL ABUTTING PROPERTIES, AS IDENTIFIED ON THE LIST PROVIDED UNDER § 8A-3 OF THIS SUBTITLE.
10	(2) THESE CONSENTS MUST BE IN THE FORM AND TENOR THAT THE DIRECTOR REQUIRES.
11	(B) Unoccupied properties.
12 13 14	IF 1 OR MORE ABUTTING PROPERTIES ARE UNOCCUPIED AND, NOTWITHSTANDING DUE DILIGENCE, THEIR OWNERS HAVE NOT BEEN FOUND, THE GATING PETITION MAY STILL BE FILED AND CONSIDERED IF:
15 16	(1) THE PETITION IS ACCOMPANIED BY THE SIGNED CONSENTS OF ALL OF THE OWNERS OF ALL OCCUPIED PROPERTIES;
17 18	(2) The properties for which signed consents have been obtained constitute at least 80% of all of the properties abutting the alley; and
19 20	(3) THE PETITION IS ACCOMPANIED BY AN AFFIDAVIT, MADE UNDER THE PENALTIES OF PERJURY, THAT:
21 22	(I) DESCRIBES AND SUBSTANTIATES DILIGENT ATTEMPTS MADE TO FIND AND OBTAIN THE CONSENT OF ALL OWNERS OF UNOCCUPIED PROPERTIES; AND
23 24	(II) AFFIRMS THAT NO OWNER OF ANY ABUTTING PROPERTY HAS REFUSED TO SIGN A CONSENT OR OTHERWISE IS KNOWN TO OBJECT TO THE PETITION.
25	§ 8A-6. PETITION BY ABUTTING OWNERS – POLICE AND FIRE REVIEWS.
26 27 28	THE GATING PETITION MUST ALSO BE ACCOMPANIED BY A LETTER FROM THE LOCAL POLICE DISTRICT AND LOCAL FIRE STATION INDICATING THAT EACH HAS REVIEWED THE PROPOSED GATING AND HAS NO OBJECTION TO IT.
29	§ 8A-7. Public hearing.
30	(A) DIRECTOR TO CONDUCT.
31 32	THE DIRECTOR OF PUBLIC WORKS SHALL CONDUCT A PUBLIC HEARING ON THE GATING PETITION

1	(B) Posting notice.
2 3	(1) At least $10\mathrm{days}$ before the date for which the hearing is scheduled, the petitioners shall post a notice of the hearing at each end of the alley.
4 5	(2) THE NOTICE MUST BE OF THE SIZE AND CONTAIN THE INFORMATION THAT THE DIRECTOR REQUIRES.
6	(C) MAILED NOTICE.
7 8 9	AT LEAST 14 DAYS BEFORE THE HEARING, THE DIRECTOR OF PUBLIC WORKS SHALL MAIL NOTICE OF THE HEARING TO THE OWNERS OF ALL PROPERTIES ABUTTING THE ALLEY, AS THEN SHOWN ON THE DEPARTMENT'S RECORDS.
10	§ 8A-8. DECISION.
11 12	The Director of Public Works shall issue a written decision on the Petition within $30\mathrm{days}$ of the hearing.
13	§ 8A-9. REQUIRED LEASE.
14	(A) IN GENERAL.
15 16 17 18	THE APPROVAL OF ANY GATING PETITION IS SUBJECT TO THE ENTRY INTO A LEASE, IN THE FORM AND ON THE TERMS APPROVED BY THE BOARD OF ESTIMATES, BETWEEN THE CITY, AS LESSOR, AND A NEIGHBORHOOD OR COMMUNITY ASSOCIATION LISTED WITH THE DEPARTMENT OF PLANNING, AS LESSEE.
19	(B) TERMS.
20	THE LEASE SHALL INCLUDE, AT A MINIMUM, PROVISIONS TO THE FOLLOWING EFFECT:
21 22 23	(1) ALL PLANS FOR THE DESIGN AND CONSTRUCTION OF GATES AND FOR ANY SODDING, GREENING, OR OTHER LANDSCAPING OF THE ALLEY MUST BE REVIEWED AND APPROVED BY THE DEPARTMENT OF PUBLIC WORKS.
24 25 26 27	(2) ALL COSTS RELATED TO THE PREPARATION OF THESE PLANS, TO THE PURCHASE, INSTALLATION, AND MAINTENANCE OF GATES, TO LANDSCAPING, AND TO GENERAL MAINTENANCE OF THE ALLEY, INCLUDING ALL FEES FOR BUILDING, FIRE, OR RELATED PERMITS, ARE AT THE LESSEE'S EXPENSE.
28 29 30	(3) ACCESS TO THE ALLEY MUST BE AVAILABLE TO FIRE, POLICE, PUBLIC WORKS, AND OTHER APPROPRIATE AGENCIES OF THE CITY AND TO ALL COMPANIES THAT HAVE UTILITIES LAWFULLY LOCATED IN THE ALLEY.
31 32	(4) A KNOX BOX MUST BE PLACED ON EACH GATE FOR ACCESS BY AUTHORIZED VEHICLES AND PEDESTRIANS.
33 34	(5) NO UTILITIES IN THE ALLEY MAY BE DISTURBED OR BUILT UPON, AND ALL CITY EASEMENTS FOR UTILITIES MUST BE PRESERVED.

1 2 3	(6) IF THE DEPARTMENT OF PUBLIC WORKS, ITS EMPLOYEES, AGENTS, OR CONTRACTORS ENTER THE ALLEY FOR MAINTENANCE, REPAIR, OR REPLACEMENT OF CITY UTILITIES, THE DEPARTMENT:
4 5	(I) IS RESPONSIBLE, ON COMPLETION OF ITS WORK, FOR RESTORING THE ALLEY TO GRADE; BUT
6 7	(II) IS NOT RESPONSIBLE FOR ANY OTHER WORK IN THE ALLEY OR FOR ANY OTHER COSTS INCURRED IN RESTORING THE ALLEY.
8 9	(7) NOTHING IN THE LEASE IS TO BE CONSTRUED TO AFFECT ANY PERSON'S PRIVATE RIGHTS IN THE ALLEY.
10 11 12	(8) THE DIRECTOR OF PUBLIC WORKS MAY TERMINATE THE LEASE AND ORDER OR CAUSE, AT THE LESSEE'S EXPENSE, THE REMOVAL OF ALL GATES AND OTHER OBSTRUCTIONS AND THE ALLEY'S RESTORATION IF, AT ANY TIME:
13	(I) THE LESSEE IS IN DEFAULT OF ANY TERM OF THE LEASE; OR
14 15	(II) THE DIRECTOR DETERMINES, IN HER OR HIS OWN DISCRETION, THAT THE GATING NO LONGER PROMOTES THE PUBLIC HEALTH, SAFETY, OR WELFARE.
16 17 18 19	(9) THE DIRECTOR OF PUBLIC WORKS MUST TERMINATE THE LEASE AND ORDER OR CAUSE, AT THE LESSEE'S SOLE EXPENSE, THE REMOVAL OF ALL GATES AND OTHER OBSTRUCTIONS AND THE ALLEY'S RESTORATION IF, AT ANY TIME, THE OWNERS OF A MAJORITY OF THE ABUTTING PROPERTIES SO REQUEST IN WRITING.
20	§ 8A-10. Administrative and judicial reviews.
21	(A) ADMINISTRATIVE APPEAL.
22 23 24	(1) Any person aggrieved by a decision of the Director of Public Works under § 8A-8 of this subtitle may appeal that decision to the Board of Municipal and Zoning Appeals.
25 26	(2) The appeal must be taken within 30 days of the date on which the decision was made.
27	(B) JUDICIAL AND APPELLATE REVIEW.
28 29 30	(1) A PERSON AGGRIEVED BY THE DECISION OF THE BOARD MAY SEEK JUDICIAL REVIEW OF THAT DECISION BY PETITION TO THE CIRCUIT COURT FOR BALTIMORE CITY IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.
31 32 33	(2) A PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT'S FINAL JUDGMENT TO THE COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF PROCEDURE.
34 35 36	SECTION 2. AND BE IT FURTHER ORDAINED , That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

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Council Bill 05-0034

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1	SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th
2	day after the date it is enacted.