

CITY OF BALTIMORE

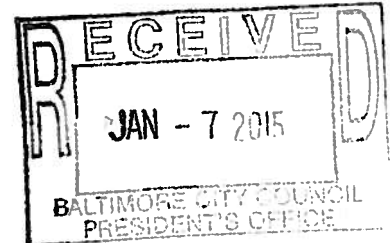
STEPHANIE RAWLINGS-BLAKE, Mayor



DEPARTMENT OF LAW

GEORGE A. NILSON, City Solicitor  
101 City Hall  
Baltimore, Maryland 21202

January 7, 2015



The Honorable President and Members  
of the Baltimore City Council  
Attn: Natawna Austin, Executive Secretary  
Room 409, City Hall  
100 N. Holliday Street  
Baltimore, Maryland 21202

Re: City Council Bill 14-0418 – Alley – Gating and Greening Program

Dear President and City Council Members:

The Law Department has been asked to review City Council Bill 14-0418 for form and legal sufficiency. The bill clarifies and simplifies the law governing and procedures for alley-gating and greening projects. Among other things, it lowers the percentage of abutting property owners required to initiate a petition to gate an alley and simplifies the process for obtaining review of petitions by certain departments.

The Law Department's concern with the bill is its demand that the Police Commissioner review and report on petitions to gate or green alleys. *See* City Council Bill 14-0418, proposed § 8A-11. We note that the demand is not a new requirement. The law currently requires the Police Commissioner to provide a letter stating the Police Commissioner does not object to actions contemplated in a petition. City Code, Art 28, § 8A-8. Nonetheless, both the current law and the proposed law violate the City Charter in demanding an action from the Police Commissioner in the performance of his duties.

The City Charter prohibits any ordinance from conflicting, impeding, obstructing, hindering or interfering with the powers of the Police Commissioner. City Charter, Art. II, § 27. The Police Commissioner's powers are provided in Article 16 of the City's Public Local Laws, which are legislated in Annapolis by the General Assembly. The Police Commissioner is delegated supervision and direction of the "affairs and operations of the Department." City Public Local Laws, Art 16, § 16-4. This authority includes the power to "establish and modify systems ... [for] the administration, management and operations of the Department." City Public Local Laws, Art 16, § 16-4. A local legislative mandate that requires the Police Commissioner to perform an administrative duty that involves the police department is, by operation of the City

No obj if amended

Charter, *ultra vires*. In effect, the limits of the City's legislative powers do not encompass police departmental operations or its administrative affairs.

Nonetheless, local legislation can direct City agencies or other entities under the control of the City government to file papers with the Police Commissioner with the expectation that the Police Commissioner may act on them in a particular manner. Accordingly, it would be lawful for Council Bill 14-0418 to provide for a review of gating and greening petitions by the Police Commissioner. Although the law cannot require the Police Commissioner to review and respond to the petitions, the Police Commissioner is free to comply with the City's request that he review and respond to them as provided in the law. Consequently, the Law Department could approve the bill if it were amended to read as follows:

Page 7, delete lines 29 through 31.

Page 8, delete letter (C), insert letter (B)

Page 8, lines 3 and 4, delete “, within the period specified in subsection (b) of this section,”.

Page 8, line 5, after the word “report” add “within 30 days after referral”.

If the revisions are made as suggested, the paragraph will read: “(B) *Action by Director. The Director may not proceed to hold a public hearing on or to otherwise consider the petition if either the Police Commissioner or the Fire Marshall, or their respective designee, reports within 30 days of referral that he or she has an objection to the petition.*”

The Law Department has no other objections to Council Bill 14-0418.

Sincerely yours,



Victor K. Tervala  
Chief Solicitor

cc: George Nilson, City Solicitor  
Angela C. Gibson, Mayor's Legislative Liaison  
Elena DiPietro, Chief Solicitor of Opinions & Advice  
Hilary Ruley, Chief Solicitor  
Jennifer Landis, Special Assistant Solicitor