



Legislation Text

File #: 14-0418, Version: 0

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

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INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL

Introduced by: The Council President
At the request of: The Administration (Department of General Services)

A BILL ENTITLED

AN ORDINANCE concerning
Alley-Gating and -Greening Program

FOR the purpose of clarifying and simplifying the law governing and procedures for alley-gating and greening projects; lowering the percentage of abutting property owners required to initiate a petition to gate an alley; simplifying the process for obtaining review of petitions by the Police and Fire Departments; clarifying the different requirements for gating, but not greening, an alley, gating and greening an alley, and greening an alley for which gating has already been approved; consolidating and conforming repetitive requirements that are common to all processes; correcting, clarifying, and conforming related provisions; and generally relating to the gating, greening, and leasing of alleys under the authority of City Charter Article II, § 35(e) and (f).

BY repealing and reordaining
Article 26 - Surveys, Streets, and Highways
Subtitle 8A - Gating and Greening Alleys
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 26. Surveys, Streets, and Highways

Subtitle 8A. Gating and Greening Alleys

§ 8A-1. Definitions.

(a) In general.

In this subtitle, the following terms have the meanings indicated.

(b) Abandoned property.

“Abandoned property” means:

- (1) an unoccupied structure or vacant lot on which taxes are in arrears for at least 2 years; or
- (2) a building that:
 - (i) is unoccupied by an owner or tenant;
 - (ii) is unfit for habitation;
 - (iii) has deteriorated to the point at which:
 - A. it is structurally unsound; or
 - B. the cost of rehabilitating the building would significantly exceed the building’s post-rehabilitation market value; and
 - (iv) has been the subject of a violation notice or order from the City that requires the owner to:
 - A. rehabilitate the building to conform to minimum code habitability requirements; or
 - B. demolish the building for health and safety reasons.

(C) [(b-1)] Department.

“Department” means the Department of General Services.

(D) [(c)] Director.

“Director” or “Director of General Services” means the Director of the Department of General Services or the Director’s designee.

(E) [(d)] Greening.

- (1) “Greening” means any alteration to an alley, beyond mere gating, that newly restricts vehicular access to or in the alley.
- (2) “Greening” includes, but is not limited to, the installation of a fixed object, plant, or tree that newly restricts vehicular access to or in the alley.

[(3) “Greening” does not include any sodding, seeding, or pavement removal that does not restrict vehicular access to or in the alley.]

§ 8A-2. RULES OF CONSTRUCTION.

(A) IN GENERAL.

IN INTERPRETING AND APPLYING THIS SUBTITLE, THE FOLLOWING RULES OF CONSTRUCTION APPLY.

(B) CAPTIONS OR HEADINGS.

THE CAPTIONS OR HEADINGS OF THE VARIOUS SECTIONS AND SUBSECTIONS:

(1) ARE FOR CONVENIENCE OF REFERENCE ONLY, INTENDED TO SUMMARIZE THE STATUTORY PROVISIONS THAT FOLLOW; AND

(2) ARE NOT LAW AND ARE NOT TO BE TAKEN AS AFFECTING THE MEANING OR EFFECT OF THE LAW.

(C) GENDER.

WORDS DENOTING ONE GENDER INCLUDE AND APPLY TO THE OTHER GENDERS AS WELL.

(D) INCLUDES; INCLUDING.

“INCLUDES” OR “INCLUDING” MEANS BY WAY OF ILLUSTRATION AND NOT BY WAY OF LIMITATION.

(E) MANDATORY, PROHIBITORY, AND PERMISSIVE TERMS.

(1) MANDATORY TERMS.

“MUST” AND “SHALL” ARE EACH MANDATORY TERMS USED TO EXPRESS A REQUIREMENT OR TO IMPOSE A DUTY.

(2) PROHIBITORY TERMS.

“MUST NOT”, “MAY NOT”, AND “NO ... MAY” ARE EACH MANDATORY NEGATIVE TERMS USED TO ESTABLISH A PROHIBITION.

(3) PERMISSIVE TERMS.

“MAY” IS PERMISSIVE.

(F) NUMBER.

THE SINGULAR INCLUDES THE PLURAL AND VICE VERSA.

(G) TIME COMPUTATIONS.

(1) COMPUTATION OF TIME AFTER AN ACT, EVENT, OR DEFAULT.

(I) IN COMPUTING ANY PERIOD OF TIME PRESCRIBED BY THIS SUBTITLE, THE DAY OF THE ACT, EVENT, OR DEFAULT AFTER WHICH THE DESIGNATED PERIOD OF TIME BEGINS TO RUN IS NOT INCLUDED.

(II) IF THE PERIOD OF TIME ALLOWED IS MORE THAN 7 DAYS, INTERMEDIATE SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS ARE COUNTED.

(III) IF THE PERIOD OF TIME ALLOWED IS 7 DAYS OR LESS, INTERMEDIATE SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS ARE NOT COUNTED.

(IV) THE LAST DAY OF THE PERIOD SO COMPUTED IS INCLUDED UNLESS IT IS A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, IN WHICH EVENT THE PERIOD RUNS UNTIL THE END OF THE NEXT DAY THAT IS NOT A SATURDAY, SUNDAY, OR LEGAL HOLIDAY.

(2) COMPUTATION OF TIME BEFORE A DAY, ACT, OR EVENT.

(I) IN DETERMINING THE LATEST DAY FOR PERFORMING AN ACT THAT IS REQUIRED BY THIS SUBTITLE TO BE PERFORMED A PRESCRIBED NUMBER OF DAYS BEFORE A CERTAIN DAY, ACT, OR EVENT, ALL DAYS PRECEDING THAT DAY, INCLUDING INTERVENING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, ARE COUNTED IN THE NUMBER OF DAYS SO PRESCRIBED.

(II) THE LATEST DAY IS INCLUDED IN THE DETERMINATION UNLESS IT IS A SATURDAY, SUNDAY, OR LEGAL HOLIDAY, IN WHICH EVENT THE LATEST DAY IS THE FIRST PRECEDING DAY THAT IS NOT A SATURDAY, SUNDAY, OR LEGAL HOLIDAY.

§ 8A-3. {RESERVED}

§ 8A-4. [§ 8A-2. In general] SCOPE; GENERAL STANDARDS.

(a) Scope OF SUBTITLE.

This subtitle governs the procedures for gating, greening, and leasing alleys under the authority of City Charter Article II, § 35(e) and (f).

(b) [Standard] STANDARDS. FOR AUTHORIZING GATING AND GREENING.

The Director of General Services may authorize the gating and, if applicable, the greening of an alley if, on petition, public notice, and hearing as provided in this subtitle, the Director determines that:

- (1) the structures abutting the alley are predominantly residential;
- (2) the alley is no longer needed for through pedestrian or vehicular traffic; and
- (3) the gating and, if applicable, the greening will promote the public health, safety, or welfare.

§ 8A-5. RULES AND REGULATIONS; FEES.

(A) [(c)] Rules and regulations.

(1) The Director of General Services [shall] MUST adopt rules and regulations to carry out this subtitle.

(3) A copy of these rules and regulations must be filed with the Department of Legislative Reference before they take effect.

(B) FEES.

[(2) These] THE rules and regulations ADOPTED UNDER THIS SUBTITLE may set reasonable fees to cover the costs incurred by the Department in processing a petition [under this subtitle].

§ 8A-6. {RESERVED}

§ 8A-7. [§ 8A-3.] Record of abutting owners.

At the request of any person interested in the gating or greening of an alley, the DEPARTMENT OF GENERAL SERVICES [shall] MUST provide that person with [a list of] ACCESS TO the names and addresses, as then shown on the Department's records, of the owners of all properties abutting that alley.

§ 8A-8. [§ 8A-4.] Petition [by abutting owners - General] REQUIRED.

(a) In general.

To initiate a proceeding under this subtitle, a petition BY ABUTTING OWNERS must be submitted to the Director of General Services.

(B) SCOPE OF PETITION.

THE PETITION MUST SPECIFY WHETHER IT IS FOR:

- (1) GATING, BUT NOT GREENING, AN ALLEY;
- (2) GATING AND GREENING AN ALLEY; OR
- (3) GREENING AN ALLEY FOR WHICH GATING ALREADY HAS BEEN APPROVED.

(C) ACCOMPANYING STATEMENT AND CONSENTS.

THE PETITION MUST BE ACCOMPANIED BY:

- (1) A STATEMENT THAT SPECIFIES HOW THE PROPOSED GATING AND, IF APPLICABLE, THE PROPOSED GREENING WOULD PROMOTE THE PUBLIC HEALTH, SAFETY, OR WELFARE; AND
- (2) THE SIGNED CONSENTS OF ABUTTING OWNERS, AS REQUIRED BY § 8A-5 {"GATING ONLY"} OR § 8A-6 {"GREENING"} OF THIS SUBTITLE, AS THE CASE MAY BE.

(D) [(b) Form] FORMS AND CONTENTS.

[The] EACH petition AND ITS ACCOMPANYING STATEMENT AND CONSENTS must be in the form and contain the information that the Director requires BY RULE OR REGULATION.

§ 8A-9. [§ 8A-5. Petition by] CONSENTS OF abutting owners - [Consents for gating] GATING ONLY.

(a) Required consents.

[(1)] A petition to gate, but not to green, an alley must be accompanied by the signed consents of at least [80%] 75% of the owners of all abutting properties, not including abandoned properties.

[(2)] These consents must be in the form and tenor that the Director requires.]

(b) Statement of diligent attempts.

If 1 or more abutting owners has not consented in writing to the proposed gating, the petition must be accompanied by an affidavit, made under the penalties of perjury, that describes and substantiates diligent attempts made by the petitioners to obtain the consents of [100% of] ALL OF the owners of all abutting properties.

§ 8A-10. [§ 8A-6. Petition] CONSENTS by abutting owners - [Consents for greening] GREENING.

(a) In general.

[(1)] Except as provided in subsection (b) of this section, a petition to gate and green an alley[,], or a petition to green an alley for which gating already has been approved[,], must be accompanied by the signed consents of 100% of the owners of all abutting properties.

[(2)] These consents must be in the form and tenor that the Director requires.]

(b) Excepted properties.

If 1 or more abutting properties are unoccupied or abandoned and, notwithstanding due diligence, their owners have not been found, the petition may still be filed and considered if:

(1) the petition is accompanied by the signed consents of 100% of the owners of all occupied properties abutting the alley;

(2) the properties for which signed consents have been obtained constitute at least 80% of all of the properties, not including any abandoned properties, abutting the alley; and

(3) the petition is accompanied by an affidavit, made under the penalties of perjury, that:

(i) describes and substantiates diligent attempts made by the petitioners to obtain the consents of 100% of the owners of all unoccupied properties and abandoned properties abutting the alley; and

(ii) affirms that no owner of any abutting property has refused to sign a consent or otherwise is known to object to the petition.

[§ 8A-7. Petition by abutting owners - Showing of public health, safety, or welfare.]

[(a)] Gating petition.]

[A petition to gate, but not green, an alley must be accompanied by:

- (1) a statement that specifies how the gating would promote the public health, safety, or welfare; and
- (2) if the petitioners anticipate that they will seek to green the alley in the future, a statement that specifies how the greening would promote the public health, safety, or welfare.]

[(b) Greening petition.]

[A petition to gate and green an alley, or a petition to green an alley for which gating already has been approved, must be accompanied by a statement that specifies how granting the petition would promote the public health, safety, or welfare.]

§ 8A-11. [§ 8A-8. Petition by abutting owners - Police and Fire reviews] REVIEWS BY POLICE AND FIRE DEPARTMENTS.

[The petition must be accompanied by a letter from the Police Commissioner and the Fire Marshall indicating that each has reviewed the proposed petition and has no objection to it.]

(A) REFERRAL BY DIRECTOR.

ON RECEIPT OF A COMPLETED PETITION, THE DIRECTOR OF GENERAL SERVICES MUST REFER THE PETITION AND TO BOTH THE POLICE COMMISSIONER AND THE FIRE MARSHALL FOR THEIR RESPECTIVE REVIEWS AND REPORTS.

(B) REPORTS AND RECOMMENDATIONS.

WITHIN 30 DAYS OF THE REFERRAL, OR WITHIN ANY LONGER PERIOD AUTHORIZED BY THE DIRECTOR OF GENERAL SERVICES, THE POLICE COMMISSIONER AND THE FIRE MARSHALL MUST SUBMIT THEIR RESPECTIVE REPORTS TO THE DIRECTOR.

(C) ACTION BY DIRECTOR.

THE DIRECTOR MAY NOT PROCEED TO HOLD A PUBLIC HEARING ON OR TO OTHERWISE CONSIDER THE PETITION IF, WITHIN THE PERIOD SPECIFIED IN SUBSECTION (B) OF THIS SECTION, EITHER THE POLICE COMMISSIONER OR THE FIRE MARSHALL, OR THEIR RESPECTIVE DESIGNEE, REPORTS THAT HE OR SHE HAS AN OBJECTION TO THE PETITION.

§ 8A-12. [§ 8A-9.] Public hearing.

(a) Director to conduct.

[The] ABSENT A TIMELY REPORT AND OBJECTION FROM THE POLICE COMMISSIONER OR THE FIRE MARSHALL, THE Director of General Services [shall conduct] MUST SCHEDULE a public hearing on the petition.

(b) Posting notice.

(1) At least 10 days before [the date for which] the hearing [is scheduled], the petitioners [shall] MUST post [a]

notice of the hearing at each end of the alley.

(2) The POSTED notice must be of the size and contain the information that the Director requires BY RULE OR REGULATION.

(c) Mailed notice.

(1) At least 10 days before the hearing, the petitioners [shall] MUST ALSO mail notice of the hearing to the owners of all properties abutting the alley, as then shown on the Department's records.

(2) The MAILED notice must [be of the size and] contain the information that the Director requires BY RULE OR REGULATION.

§ 8A-13. [§ 8A-10.] Decision.

[(a) In general.]

[(1) The] WITHIN 30 DAYS OF THE HEARING, THE Director of General Services [shall] MUST:

(1) issue a written decision on the petition [within 30 days of the hearing.]; AND

(2) [A] SEND A copy of the [written] decision [shall be sent] to [a] THE person designated FOR THIS PURPOSE by the petitioners.

[(b) Additional finding for gating petitions.]

[(1) If the petitioners request to gate, not green, the alley, but indicate that they might seek to green the alley in the future, the director shall make a written finding that:

(i) the potential greening would promote the public health, safety, or welfare;

(ii) the potential greening would not promote the public health, safety, or welfare; or

(iii) more information would be needed in order to determine whether the potential greening would promote the public health, safety, or welfare.]

[(2) If, subsequent to the issuance of the Director's decision on gating, the petitioners submit a petition to green the alley, the Director may rely on his or her earlier finding of whether the greening would promote the public health, safety, or welfare.]

§ 8A-14. {RESERVED}

§ 8A-15. [§ 8A-11.] Required lease[- Gating].

(a) In general.

The approval of any petition to gate[, but not to] OR green[,] an alley 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 [an] A NEIGHBORHOOD ASSOCIATION OR OTHER NON-PROFIT entity that consists of property owners whose [lots] PROPERTIES abut the alley OR OTHERWISE REPRESENTS THE AREA IN WHICH THE ALLEY AND ITS ABUTTING

PROPERTIES ARE LOCATED, as lessee.

(b) Terms AND CONDITIONS.

The lease [shall] MUST include, at a minimum, provisions to the following effect[:].

(1) All plans for the design and construction of gates, [and] for any sodding, SEEDING, PAVEMENT removal [of pavement], or other landscaping of the alley, AND, IF WITHIN THE SCOPE OF THE APPROVED PETITION, FOR ANY GREENING OF THE ALLEY must be reviewed and approved by the Department of Public Works and the Department of General Services.

(2) All costs related to the preparation of these plans, to the purchase, installation, and maintenance of gates, TO SODDING, SEEDING, [landscaping, including the] PAVEMENT removal [of pavement], OR OTHER LANDSCAPING OF THE ALLEY, OR, IF WITHIN THE SCOPE OF THE APPROVED PETITION, TO ANY GREENING OF THE ALLEY, and ALL COSTS RELATED to general maintenance of the alley, including all fees for building, fire, or related permits, are at the lessee's expense.

(3) [The] IF THE APPROVED PETITION IS FOR GATING, BUT NOT GREENING, THE ALLEY, THE lessee may not cause or permit [the] ANY [“]greening[”] of the alley[. That is, the lessee may not make] OR OTHERWISE CAUSE or permit any alteration to the alley, beyond mere gating, that would newly restrict vehicular access to or in the alley.

(4) IF THE APPROVED PETITION IS FOR GATING AND GREENING THE ALLEY OR FOR GREENING AN ALLEY FOR WHICH GATING ALREADY HAS BEEN APPROVED, NO GREENING ACTIVITIES MAY BE UNDERTAKEN UNTIL THE LESSEE HAS FIRST ENTERED INTO A DEVELOPER'S AGREEMENT WITH THE DEPARTMENT.

(5) [(4)] Access to the alley must be available to [fire, police, public works,] THE CITY'S POLICE, FIRE, PUBLIC WORKS, AND TRANSPORTATION DEPARTMENTS, [and] TO ALL other appropriate agencies of the City, and to all companies that have utilities lawfully located in the alley.

(6) [(5)] A Knox box must be placed on each gate for access by authorized vehicles and pedestrians.

(7) [(6)] No utilities in the alley may be disturbed or built upon, and all easements for utilities must be preserved.

(8) [(7)] If the [Department of] Public Works DEPARTMENT OR TRANSPORTATION DEPARTMENT, [its] THEIR employees, agents, or contractors enter the alley for maintenance, repair, or replacement of City utilities, the Department:

- (i) is responsible, on completion of its work, for restoring the alley to grade; but
- (ii) is not responsible for any other work in the alley or for any other costs incurred in restoring the alley.

(9) [(8)] Nothing in the lease MAY AFFECT OR [is to] be construed to affect any person's private rights in the alley.

(10) [(9)] The Director of General Services may terminate the lease and may order or cause, at the lessee's expense, the removal of all gates and other obstructions and the alley's restoration if:

(I) AT ANY TIME, THE OWNERS OF A MAJORITY OF THE ABUTTING PROPERTIES, NOT INCLUDING ANY ABANDONED PROPERTIES, SO REQUEST IN WRITING;

(II) [(i)] at any time, the lessee is in default of any term of the lease and has failed to cure that default in accordance with the terms of the lease; or

(III) [(ii)] after a public hearing, with prior notice as provided in the lease, the [director] DIRECTOR determines that:

A. the alley is needed for through pedestrian or vehicular traffic; or

B. the gating AND, IF APPLICABLE, THE GREENING no longer promotes the public health, safety, or welfare.

[(10) The Director of General Services may, after a public hearing, with prior notice as provided in the lease, 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, not including any abandoned properties, so request in writing.]

[§ 8A-12. Required lease - Greening.]

[(a) In general.]

[The approval of any petition to gate and green an alley, or to green an alley for which gating already has been approved, 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 an entity that consists of property owners whose lots abut the alley, as lessee.]

[(b) Terms.]

[The lease shall include, at a minimum, provisions to the following effect:

(1) All plans for the design and construction of gates, for the greening of the alley, and for any sodding, removal of pavement, or other landscaping of the alley must be reviewed and approved by the Department of General Services.

(2) All costs related to the preparation of these plans, to the purchase, installation, and maintenance of gates, to greening, to landscaping, including the removal of pavement, and to general maintenance of the alley, including all fees for building, fire, or related permits, are at the lessee's expense.

(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.

(4) A Knox box must be placed on each gate for access by authorized vehicles and pedestrians.

(5) No utilities in the alley may be disturbed or built upon, and all easements for utilities must be preserved.

(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:

- (i) is responsible, on completion of its work, for restoring the alley to grade; but
- (ii) is not responsible for any other work in the alley or for any other costs incurred in restoring the alley.
- (7) Nothing in the lease is to be construed to affect any person's private rights in the alley.
- (8) The Director of General Services may terminate the lease and may order or cause, at the lessee's expense, the removal of all gates and other obstructions and the alley's restoration if:
 - (i) at any time, the lessee is in default of any term of the lease and has failed to cure that default in accordance with the terms of the lease; or
 - (ii) after a public hearing, with prior notice as provided in the lease, the director determines that:
 - A. the alley is needed for through pedestrian or vehicular traffic; or
 - B. the gating or greening no longer promotes the public health, safety, or welfare.
- (9) The Director of General Services may, after a public hearing, with prior notice as provided in the lease, 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, not including any abandoned properties, so request in writing.]

§ 8A-16. [§ 8A-13.] Restoration of alley by utility companies.

If a company that has utilities lawfully located in a leased alley enters the alley for maintenance, repair, or replacement of the utilities, the company:

- (1) is responsible, on completion of its work, for restoring the alley to grade; but
- (2) is not responsible to the lessee for any other work in the alley or for any other costs incurred in restoring the alley.

§ 8A-17. {RESERVED}

§ 8A-18. [§ 8A-14.] Judicial and appellate review.

- (a) Judicial review.

A person aggrieved by a final decision of the Director under this subtitle may seek judicial review of that decision by petition to the Circuit Court for Baltimore City in accordance with the Maryland Rules of Procedure.

- (b) Appellate review.

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.

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.

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

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