

PROPOSED ALLEY ORDINANCE

RELATED QUESTIONS AND ANSWERS

1. How can the City prohibit the public from using alleys, which are public spaces?

The fact that a space is public does not mean that all members of the public have unfettered access to the space. Alleys are owned by the abutting property owners, but alleys are dedicated by plat “to the public use” and the City has an easement on them which is dominant to all other uses. As noted above, the City Charter gives the Council authority to regulate and control alleys. Charter Chapter 8, section 1. This authority is similar to the authority the Council has to restrict bicyclists from using Nicollet Mall during business hours. Other examples of such regulations of public space include the prohibition on jaywalking (pedestrians are prohibited from using streets as crosswalks), the requirement that pedestrians use sidewalks if they are provided adjacent to roadways, or prohibitions on entering parks between certain hours. Of course, regulations of public space must survive constitutional scrutiny.

2. Do other cities in the United States have similar ordinances?

To the best of our knowledge, no other cities in the United States have an ordinance restricting pedestrian traffic in alleys. Similarly, no other cities have an ordinance similar to MCO § 478.260, Minneapolis’ ordinance restricting vehicular traffic in alleys.

Although no other U.S. cities have ordinances akin to the current proposal, other cities have undertaken efforts to close off city streets and alleys for crime prevention purposes. Among these cities are Dallas and Houston, TX, Chicago, IL, Bridgeport, CT, and Oakland, CA. In these cases, the cities typically have constructed physical barriers to entry to streets and alleys. The neighborhoods in which street or alley closure has been adopted have tended to be high-crime areas. Targeted street and alley closures have been somewhat effective at reducing crime. (Ronald V. Clarke, Closing Streets and Alleys: to Reduce Crime: Should You Go Down This Road?, U.S. Department of Justice (2002)).

Additionally, the United Kingdom has recently begun efforts at “alley-gating.” Alley-gating is a practice in which alleys are physically gated from streets and sidewalks. In the U.K., it appears that the most common housing type in which alley-gating is used is row houses. The sheer fact that the houses are connected makes it logistically easier to erect gates that block access to the rear of the houses. The gates offer a near-complete barricade to entry, except for residents with keys. In the United Kingdom, the practice of alley-gating was initiated to respond to the problem of burglary of dwelling. In a recent evaluation of alley-

gating in Liverpool, England, it was found that burglary decreased by approximately 37 percent in the gated areas, and that burglary declined in direct proportion to the number of gates installed over time. Additionally, alley-gates were cost-beneficial, with a return of around \$1.86 for every dollar spent. (Bowers, Johnson & Hirschfield, "Closing Off Opportunities for Crime: An Evaluation of Alley-Gating," European Journal on Criminal Policy and Research (2003)).

3. At what point would the police have probable cause to believe a crime has occurred?

Assume, hypothetically, that the police are patrolling alleys in an effort to enforce this ordinance and they see a person who is walking down the alley. There are several stages of involvement in which the police can engage.

- a. **Making initial inquiries of the person.** The police, like any other citizen, can approach individuals and engage them in conversation. For example, an officer can walk up to someone on the street and ask if he has a crack pipe on his person. To make such an inquiry, the officer does not need either articulable suspicion or probable cause to believe a crime has been committed. Terry v. Ohio, 392 U.S. 1 (1968); Sibron v. New York, 392 U.S. 40 (1968); State v. Harris, 590 N.W.2d 90 (Minn. 1999) (even if a citizen feels a "moral or instinctive pressure to cooperate," complying with a police officer's request or answering a question because the person asking is a police officer does not constitute a seizure). Thus, it is lawful for an officer to ask questions of anyone she sees in an alley.
- b. **Develop articulable suspicion.** In the course of asking questions, an officer might develop articulable suspicion to believe a crime is occurring or has occurred. In the case of the proposed ordinance, an officer might learn that the person she has approached does not live along the alley. That would provide a basis for asking additional questions, in an effort to determine whether the person has another legitimate reason for being in the alley (i.e., is an invitee, garbage collector, etc.). If the officer has articulable suspicion to believe the person is committing/has committed a crime (based on admissions/answers to questions asked), the officer may ask the person for identification. The identification might provide additional evidence that the person does not live along the alley. If the person approached does not provide admissions that lead to articulable suspicion, the officer must end the encounter.
- c. **Develop probable cause to believe a crime has occurred.** If the officer learns that the person does not live on the alley and that none of the exceptions apply, she has probable cause (in fact, the person may have provided enough evidence by admission to have reached *proof beyond a reasonable doubt* level) to believe a crime has occurred. In

most cases, an officer would then issue a citation (because this is a misdemeanor offense). If the officer believes the person poses a threat to self/others, will not respond to the citation, or will continue criminal activity, the officer can arrest the person, pursuant to Minn. R. Crim. Pro. 6.01. If the officer decides to arrest the person, she may search the person incident to arrest.

4. Doesn't this ordinance invite discriminatory enforcement?

The ordinance itself is written to apply uniformly to all people who use alleys, and is race-neutral. As with any other ordinance, policymakers rely on our law enforcement partners to fairly apply the law.

5. What about garage sales and backyard parties?

Garage sales and backyard parties would be unaffected by the proposed ordinance. The ordinance specifically provides that "invitees" are not prohibited from using alleys. "Invitees" are persons invited – personally or generally – onto the property of another. That is, "invitees" include individuals a homeowner has personally invited to his house for a party, as well as those who are invited onto the property in a more general sense, such as by posting a sign at the end of a block advertising a garage sale. Thus, the homeowner/garage sale sponsor, by choosing to have a garage sale, invites potential attendees into his/her garage and adjoining alley. Similarly, attendees of a backyard party, who seek to access the party through the alley, would be unaffected by the proposed ordinance because they are also invitees.

6. Instead of creating a new ordinance, why not simply amend Minneapolis Ordinance § 478.260?

The Council could choose to amend MCO § 478.260 to include pedestrian traffic as well as vehicular traffic. However, a new ordinance was drafted to apply to pedestrians because section 478.260 is included in Title 18, the traffic code for the City of Minneapolis. Because the traffic code generally applies to vehicular traffic, regulating pedestrian traffic in a section that normally applies to vehicles was not consistent with the rest of the title. Instead, the proposal locates this section in the miscellaneous offenses section, which applies to other person-specific conduct, such as loitering, lurking, and aggressive solicitation.