

5023--A

2015-2016 Regular Sessions

I N A S S E M B L Y

February 10, 2015

Introduced by M. of A. PERRY -- Multi-Sponsored by -- M. of A. AUBRY,
COOK, ROBINSON -- read once and referred to the Committee on Transportation -- recommitted to the Committee on Transportation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the New York city charter and the vehicle and traffic law, in relation to the "open driveway act" regarding the environmental control board adjudication of disputes concerning the blocking of a driveway; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "open
2 driveway act".
3 S 2. Section 1049-a of the New York city charter is amended by adding
4 a new subdivision c-1 to read as follows:
5 C-1. (1) THE ENVIRONMENTAL CONTROL BOARD SHALL ADOPT RULES AND REGU-
6 LATIONS TO ADJUDICATE DISPUTES ARISING BETWEEN ADJOINING PROPERTY OWNERS
7 WHO HAVE OWNERSHIP IN AND USE A SHARED DRIVEWAY, WHERE SUCH DISPUTES
8 ARISE FROM THE BLOCKING OF SUCH DRIVEWAY. SUCH RULES AND REGULATIONS
9 SHALL PROVIDE, AMONG OTHER THINGS, THAT THE BOARD:
10 (A) PROVIDE PROPER NOTICE TO PERSONS WHOSE INTEREST IN REAL PROPERTY
11 ARE AFFECTED BY THE ADJUDICATION;
12 (B) RENDER A DECISION THAT INCLUDES A DETERMINATION OF THE RIGHTS OF
13 THE PARTIES CONCERNING THE PROPERTY; AND
14 (C) IMPOSE PENALTIES IN ACCORDANCE WITH A SCHEDULE OF MONETARY FINES,
15 WHENEVER A BLOCKING OF A DRIVEWAY IS DETERMINED TO HAVE OCCURRED. MONE-
16 TARY FINES SHALL NOT EXCEED ONE HUNDRED FIFTY DOLLARS.
17 (2) FOR PURPOSES OF ADJUDICATING THESE DISPUTES, THE BOARD SHALL
18 APPOINT A HEARING OFFICER WHO SHALL BE AN ATTORNEY WITH A BACKGROUND AND
19 EXPERIENCE IN REAL PROPERTY LAW.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD03472-03-6

(3) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "BLOCKING" SHALL MEAN THE PARKING OR STANDING OF A MOTOR VEHICLE IN A MANNER WHICH PROHIBITS THE INGRESS OR EGRESS OF OTHER VEHICLES AUTHORIZED TO USE SUCH DRIVEWAY.

(4) NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO DIMINISH OR EXTINGUISH A PERSON'S RIGHT TO A TRIAL BY JURY IN THE FIRST INSTANCE FOR THE DETERMINATION OF A CLAIM TO REAL PROPERTY PURSUANT TO THE REAL PROPERTY ACTIONS AND PROCEEDINGS LAW, THE CIVIL PRACTICE LAW AND RULES, AND ANY OTHER APPLICABLE LAW.

(5) IF ANY PROVISION OF THIS SUBDIVISION OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE REMAINDER OF THIS SUBDIVISION AND SECTION SHALL NOT BE AFFECTED THEREBY.

S 3. Subdivision a of section 1049-a of the New York city charter, as amended by local law number 38 of the city of New York for the year 2015, is amended to read as follows:

a. There shall be in the office of administrative trials and hearings an environmental control board consisting of the commissioner of environmental protection, the commissioner of sanitation, the commissioner of buildings, the commissioner of health and mental hygiene, the police commissioner, the fire commissioner and the chief administrative law judge of the office of administrative trials and hearings, who shall be chair, all of whom shall serve on the board without compensation and all of whom shall have the power to exercise or delegate any of their functions, powers and duties as members of the board, and [six] SEVEN persons to be appointed by the mayor, with the advice and consent of the city council, who are not otherwise employed by the city, one to be possessed of a broad general background and experience in the field of air pollution control, one with such background and experience in the field of water pollution control, one with such background and experience in the field of noise pollution control, one with such background and experience in the real estate field, one with such background and experience in the business community, ONE WHO IS AN ATTORNEY WITH SUCH BACKGROUND AND EXPERIENCE IN REAL PROPERTY LAW, and one member of the public, and who shall serve for four-year terms. Such members shall be compensated at a rate that may be specified by the chair and approved by the mayor. Within the board's appropriation, the chair may appoint an executive director, subject to the approval of the board, and such hearing officers, including non-salaried hearing officers, and other employees as the chair may from time to time find necessary for the proper performance of the board's duties. The board shall be convened by the chairperson or in his or her absence a deputy commissioner of the office of administrative trials and hearings or at the request of any three members thereof. Five members of the board, at least two of whom shall not be city officials, shall constitute a quorum.

S 4. Section 237 of the vehicle and traffic law is amended by adding a new subdivision 16 to read as follows:

16. (A) IN THE CITY OF NEW YORK, TO ISSUE A NOTICE OF VIOLATION WHENEVER THE BLOCKING OF A DRIVEWAY HAS OCCURRED, WHERE THE OWNERSHIP AND USE OF SUCH DRIVEWAY IS SHARED BY ADJOINING PROPERTY OWNERS; PROVIDED, HOWEVER, THAT SUCH VIOLATIONS SHALL BE HEARD AND DETERMINED BY THE ENVIRONMENTAL CONTROL BOARD PURSUANT TO SUBDIVISION D OF SECTION ONE THOUSAND FORTY-NINE-A OF THE NEW YORK CITY CHARTER.

(B) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "BLOCKING" SHALL MEAN THE PARKING OR STANDING OF A MOTOR VEHICLE IN A MANNER WHICH PROHIBITS THE INGRESS OR EGRESS OF OTHER VEHICLES AUTHORIZED TO USE SUCH DRIVEWAY.

1 S 5. This act shall take effect on the ninetieth day after it shall
2 have become a law, and shall expire July 1, 2025 when upon such date the
3 provisions of this act shall be deemed repealed; provided, however, that
4 the environmental control board and the parking violations bureau in the
5 city of New York shall promulgate rules and regulations necessary to
6 effectuate the provisions of this act prior to such effective date.