S T A T E O F N E W Y O R K

5513

2009-2010 Regular Sessions

I N S E N A T E

May 13, 2009

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Cities

AN ACT to amend the New York city charter, the vehicle and traffic law and the administrative code of the city of New York, 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:

Section 1. This act shall be known and may be cited as the "open driveway act".

S 2. Section 1049-a of the New York city charter is amended by adding a new subdivision c-1 to read as follows:

C-1. (1) THE ENVIRONMENTAL CONTROL BOARD SHALL ADOPT RULES AND REGULATIONS TO ADJUDICATE DISPUTES ARISING BETWEEN ADJOINING PROPERTY OWNERS WHO HAVE OWNERSHIP IN AND USE A SHARED DRIVEWAY, WHERE SUCH DISPUTES ARISE FROM THE BLOCKING OF SUCH DRIVEWAY. SUCH RULES AND REGULATIONS SHALL PROVIDE, AMONG OTHER THINGS, THAT THE BOARD:

(A) PROVIDE PROPER NOTICE TO PERSONS WHOSE INTEREST IN REAL PROPERTY ARE AFFECTED BY THE ADJUDICATION;

(B) RENDER A DECISION THAT INCLUDES A DETERMINATION OF THE RIGHTS OF THE PARTIES CONCERNING THE PROPERTY; AND

(C) IMPOSE PENALTIES IN ACCORDANCE WITH A SCHEDULE OF MONETARY FINES, WHENEVER A BLOCKING OF A DRIVEWAY IS DETERMINED TO HAVE OCCURRED. MONETARY FINES SHALL NOT EXCEED ONE HUNDRED FIFTY DOLLARS.

(2) FOR PURPOSES OF ADJUDICATING THESE DISPUTES, THE BOARD SHALL APPOINT A HEARING OFFICER WHO SHALL BE AN ATTORNEY WITH A BACKGROUND AND EXPERIENCE IN REAL PROPERTY LAW.

(3) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "BLOCKING" SHALL MEAN THE PARKING OR STANDING OF A MOTOR VEHICLE IN A MANNER WHICH

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

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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 35 of the city of New York for the year 2008, 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 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 SHALL BE 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 the rate of one hundred fifty dollars per day when performing the work of the board. Within its appropriation, the board may appoint an executive director and such hearing officers, including non-salaried hearing officers and other employees as it may from time to time find necessary for the proper performance of its duties.

S 4. Section 237 of the vehicle and traffic law is amended by adding a new subdivision 12 to read as follows:

12. (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.

S 5. Subdivision b of section 24-346 of the administrative code of the city of New York, as amended by local law 35 of the city of New York for the year 2008, is amended to read as follows:

b. Any person who violates or fails to comply with any of the provisions of this chapter and chapter four of this title or any order, rule or regulation issued by the board or commissioner or with the conditions of any permit issued by the commissioner within the city of

New York shall be liable for a civil penalty of not less than fifty nor more than one thousand dollars for each violation. In the case of a continuing violation each [days] DAY'S continuance shall be a separate and distinct offense. The environmental control board shall have the power to impose such civil penalties. A proceeding to impose such penalties shall be commenced by the service of a notice of violation returnable to such board. Such board, after a hearing as provided by the rules and regulations of the board, shall have the power to enforce its final decisions and orders imposing such civil penalties as if they were money judgments pursuant to subdivision d of section one thousand forty-nine-a of the New York city charter. A civil penalty imposed by the board may also be collected in an action brought in the name of the city in any court of competent jurisdiction. The board, in its discretion, may, within the limits set forth in this subdivision, establish a schedule of civil penalties indicating the minimum and maximum penalty for each separate offense.

S 6. This act shall take effect on the ninetieth day after it shall have become a law, and shall expire July 1, 2015 when upon such date the provisions of this act shall be deemed repealed; provided, however, that the environmental control board and the parking violations bureau in the city of New York shall promulgate rules and regulations necessary to effectuate the provisions of this act prior to such effective date.