

3433

2013-2014 Regular Sessions

I N A S S E M B L Y

January 25, 2013

Introduced by M. of A. PERRY -- Multi-Sponsored by -- M. of A. AUBRY,
COOK, HEASTIE, JACOBS, ROBINSON, WEISENBERG -- read once and referred
to the Committee on Transportation

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 ASSEM-
BLY, 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.
20 (3) FOR THE PURPOSES OF THIS SUBDIVISION, THE TERM "BLOCKING" SHALL
21 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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1 PROHIBITS THE INGRESS OR EGRESS OF OTHER VEHICLES AUTHORIZED TO USE SUCH
2 DRIVEWAY.

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

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

11 S 3. Subdivision a of section 1049-a of the New York city charter, as
12 amended by section 5 of question 2 of local law number 60 of the city of
13 New York for the year 2010, is amended to read as follows:

14 a. There shall be in the office of administrative trials and hearings
15 an environmental control board consisting of the commissioner of envi-
16 ronmental protection, the commissioner of sanitation, the commissioner
17 of buildings, the commissioner of health and mental hygiene, the police
18 commissioner, the fire commissioner and the chief administrative law
19 judge of the office of administrative trials and hearings, who shall be
20 chair, all of whom shall serve on the board without compensation and all
21 of whom shall have the power to exercise or delegate any of their func-
22 tions, powers and duties as members of the board, and six persons to be
23 appointed by the mayor, with the advice and consent of the city council,
24 who are not otherwise employed by the city, one to be possessed of a
25 broad general background and experience in the field of air pollution
26 control, one with such background and experience in the field of water
27 pollution control, one with such background and experience in the field
28 of noise pollution control, one with such background and experience in
29 the real estate field, one with such background and experience in the
30 business community, ONE WHO SHALL BE AN ATTORNEY WITH SUCH BACKGROUND
31 AND EXPERIENCE IN REAL PROPERTY LAW, and one member of the public, and
32 who shall serve for four-year terms. Such members shall be compensated
33 at a rate that may be specified by the chair and approved by the mayor.
34 Within the board's appropriation, the chair may appoint an executive
35 director, subject to the approval of the board, and such hearing offi-
36 cers, including non-salaried hearing officers, and other employees as
37 the chair may from time to time find necessary for the proper perform-
38 ance of the board's duties.

39 S 4. Section 237 of the vehicle and traffic law is amended by adding a
40 new subdivision 13 to read as follows:

41 13. (A) IN THE CITY OF NEW YORK, TO ISSUE A NOTICE OF VIOLATION WHEN-
42 EVER THE BLOCKING OF A DRIVEWAY HAS OCCURRED, WHERE THE OWNERSHIP AND
43 USE OF SUCH DRIVEWAY IS SHARED BY ADJOINING PROPERTY OWNERS; PROVIDED,
44 HOWEVER, THAT SUCH VIOLATIONS SHALL BE HEARD AND DETERMINED BY THE ENVI-
45 RONMENTAL CONTROL BOARD PURSUANT TO SUBDIVISION D OF SECTION ONE THOU-
46 SAND FORTY-NINE-A OF THE NEW YORK CITY CHARTER.

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

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

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

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

18 S 6. This act shall take effect on the ninetieth day after it shall
19 have become a law, and shall expire July 1, 2019 when upon such date the
20 provisions of this act shall be deemed repealed; provided, however, that
21 the environmental control board and the parking violations bureau in the
22 city of New York shall promulgate rules and regulations necessary to
23 effectuate the provisions of this act prior to such effective date.