STATE OF NEW YORK

2045

2017-2018 Regular Sessions

IN ASSEMBLY

January 17, 2017

Introduced by M. of A. LENTOL, COLTON, HIKIND, ORTIZ -- Multi-Sponsored by -- M. of A. CUSICK, FARRELL, GLICK, NOLAN, RIVERA, ROSENTHAL -- read once and referred to the Committee on Cities

AN ACT to amend the New York city charter, in relation to an independent building review agency

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The New York city charter is amended by adding a new section 650 to read as follows:

§ 650. Independent building review agency. a. (1) There is hereby created within the department an independent building review agency (hereinafter "the agency"). The head of the agency shall be the director who shall be appointed by the mayor subject to the confirmation of the city council. Within thirty days of the effective date of this section, the mayor shall appoint his or her director. Within thirty days after the mayor's appointment, the city council shall confirm or deny such person's appointment. The mayor shall continue to have thirty-day periods to appoint new candidates and the city council shall continue to have thirty-day periods to review and act upon such candidates.

(2) Once appointed, the director shall not be removed from his or her position prior to the expiration of his or her term except for good cause. The director shall serve a three-year term. At least sixty days but no longer than one hundred twenty days prior to the expiration of the director's term, the mayor shall make an appointment of a successor candidate. Such candidate's appointment shall be subject to the provisions of paragraph one of this subdivision.

(3) The director shall receive a salary that shall be fixed by the city council. The city council shall not alter the salary of a director during his or her term.

(4) Subject to the provisions of the civil service law, the director may appoint such other officers, employees, agents and consultants as

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

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may be necessary, prescribe their duties, fix their compensation and provide for payment of their reasonable expenses, all within amounts available therefor by appropriation. The director may transfer officers or employees from their positions to other positions in the department, or abolish or consolidate such positions.

b. The independent building review agency may adopt and amend regulations consistent with law. The agency's regulation shall not be subject to the state administrative procedure act. Such regulations shall:

(1) establish the procedures by which the agency brings violations against individuals and entities who are alleged to have violated laws, rules, and regulations relating to their specific land development project;

(2) set forth a schedule of fines relating to any violation of a building law, code, rule, or regulation;

(3) establish any other penalties that the agency may impose against an individual for violating a law, rule, or regulation enforced by the agency, including the ability to revoke building permits, and ordering the offending party to cease his or her actions; and

(4) establish any other rule that the agency deems necessary to foster the adherence to laws, rules, and regulations by individuals and entities.

c. The agency shall enforce the provisions of the laws of this state, the administrative code of the city of New York, this chapter and any rules and regulations made thereunder, which relate to:

(1) the development of an unimproved lot;

(2) the alteration of any improved lot;

(3) the safety of any equipment used at a site in which any development or alteration of a lot takes place;

(4) the employment of individuals at the worksite who would otherwise require state or city licensure;

(5) any issue that would otherwise be subject to review by an inspector or code enforcement officer or similar public officer; and

(6) any rule or regulation that the agency promulgates directed at ensuring the health, safety, and well-being of the citizens of the city of New York.

d. (1) (a) The agency shall conduct proceedings for the adjudication of violations of the laws, rules and regulations enforced by it pursuant to the provisions of subdivision c of this section or of any other law providing for enforcement by the agency in accordance with this subdivision and with rules and regulations promulgated by the agency, and shall have the power to render decisions and orders and to impose the civil penalties provided under law for such violations.

(b) The form and wording of notices of violation shall be prescribed by the agency. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

(c) The notice of violation shall contain information advising the person charged of the manner and the time in which such person may either admit or deny the violation charged in the notice. Such notice of violation shall also contain a warning to advise the person charged that failure to plead in the manner and time stated in the notice may result in a default decision and order being entered against such person. The original or a copy of the notice of violation shall be filed and

retained by the agency and shall be deemed a record kept in the ordinary course of business.

(d) Where a respondent has failed to plead within the time allowed by the rules of the agency or has failed to appear on a designated hearing date or a subsequent date following an adjournment, such failure to plead or appear shall be deemed, for all purposes, to be an admission of liability and shall be grounds for rendering a default decision and order imposing a penalty in the maximum amount prescribed under law for the violation charged and any other remedy available to the agency.

(e) Any final order of the agency imposing a civil penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by the agency which may be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state, and may be enforced without court proceedings in the same manner as the enforcement of money judgments entered in civil actions; provided, however, that no such judgment shall be entered which exceeds the sum of one hundred thousand dollars for each respondent.

(f) Notwithstanding the foregoing provision, before a judgment based upon a default may be so entered the agency must have notified the respondent by first class mail in such form as the agency may direct:
(i) of the default decision and order and the penalty imposed;

(ii) that a judgment will be entered in the civil court of the city of New York or any other place provided for the entry of civil judgments within the state of New York; and

(iii) that entry of such judgment may be avoided by requesting a stay of default for good cause shown and either requesting a hearing or entering a plea pursuant to the rules of the agency within thirty days of the mailing of such notice.

(g) A judgment entered pursuant to this paragraph shall remain in full force and effect for eight years.

(2) (a) The agency shall not enter any final decision or order pursuant to the provisions of paragraph one of this subdivision unless the notice of violation shall have been served in the same manner as is prescribed for service of process by article three of the civil practice law and rules or article three of the business corporation law. A person need not be personally served before the agency may enter a final decision against him or her.

(b) Proof of such service of the notice of violation shall be filed with the agency within twenty days; service shall be complete ten days after such filing.

(3) The agency may apply to a court of competent jurisdiction for enforcement of any other decision or order issued by such agency or of any subpoena issued by such agency.

§ 2. This act shall take effect immediately.