STATE OF NEW YORK

7068--B

2019-2020 Regular Sessions

IN ASSEMBLY

April 4, 2019

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Housing -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the administrative code of the city of New York, in relation to enacting the "adjoining owners' bill of rights"

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 "adjoining owners' bill of rights".

§ 2. The administrative code of the city of New York is amended by adding a new section 28-103.34 to read as follows:

§ 28-103.34 Adjoining owners' bill of rights. 1. Definitions. As used in this section, the following terms shall have the following meanings:

ADJOINING OWNER. A property owner who either:

(i) is the owner of any property which shares a property line with the property for which a developer has applied for a permit; or

(ii) is the owner of any historic structure, the nearest property lines of which are contiguous with or within a lateral distance of ninety feet from the edge of the lot line of a property for which a developer has applied for a permit.

BILL OF RIGHTS. The adjoining owners' bill of rights, published by the commissioner on the department of buildings' website.

DEVELOPER. Any individual, corporation, or other entity who has applied for a building permit involving the demolition or alteration of an existing building and/or the construction of a new building.

2. The commissioner shall cause to be published on the website of the city of New York's department of buildings, an adjoining owners' bill of rights, as set forth by this section. The commissioner shall further require each and every developer to both hand deliver and send by

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

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certified mail to each adjoining owner, one copy of the notification required by section 2209.1.1 of the New York city building code and one copy of the bill of rights, where the permit applied for by such developer includes: (i) an excavation occurring within five feet from an adjoining owner's property line; (ii) work performed on a shared and/or party wall and/or encroachment in any manner; (iii) an excavation to a depth of more than ten feet anywhere on such developer's property; and/or (iv) an underpinning, and/or encroachment in any manner on such adjoining owner's property.

3. The notification and bill of rights shall be delivered to each adjoining owner not less than sixty days prior to the grant of a permit by the department of buildings, advising such adjoining owners of their rights under sections 3309 and 2209.1.1 of the New York city building code. Where no response is received from an adjoining owner by a developer with respect to negotiation of a license agreement as required under the New York city building code, a second copy of the notification and bill of rights shall be delivered by certified mail to such adjoining owner not more than forty-five calendar days, and not less than thirty calendar days prior to the department of building's grant of a permit to such developer.

4. The bill of rights shall include, at a minimum, the following language:

"PREAMBLE: This is to advise you that _____, (name of entity applying for the permit) hereafter "DEVELOPER", with a business address at _____, and a telephone number at _____, has applied for a permit from the Department of Buildings to develop _____, (street address of the property for which DEVELOPER has applied for a permit from the Department of Buildings) hereafter "SUBJECT PROPERTY", adjacent to or contiguous with your property at _____, (address of adjoining or contiguous property being notified) at which address DEVELOPER plans work as set forth in its permit application, including one or more of the types of work described in Subdivision 2 of Section 28-103.34 of the New York City Building Code. You are receiving this notice because you and your property may be entitled to protections under law, at the expense of the DEVELOPER, including those set forth in the Bill of Rights below. You may also be receiving this notice if you own a historic property within 90 lateral feet of a property line of the SUBJECT PROPERTY, in which case you are entitled to vibration and crack monitoring at the expense of DEVELOPER pursuant to Section 2209.4.4 of the New York City Building Code.

ADJOINING OWNERS' BILL OF RIGHTS:

1. RIGHT TO WRITTEN NOTIFICATION: You have a right to written notification, to be received by you via certified mail from the DEVELOPER not less than 60 days prior to the grant of any permit relating to the work set forth above, that a permit has been applied for by DEVELOPER for one or more of the activities set forth in Section 28-103.34 of the New York City Building Code. The notification shall describe the nature of the work, estimated, schedule and duration, details of inspections, protections, and/or monitoring to be performed on the adjoining property, protection to be installed on the adjoining property, and contact information for the project. This notification will also include a copy of this Adjoining Owners' Bill of Rights. Where no response is received, a second written notification shall be made no more than 45 calendar days, and not less than 30 calendar days, prior to the Building Department's grant of a permit for the work.

2. RIGHT TO PROTECTION AT DEVELOPER'S EXPENSE: Under the New York City Building Code, it is the responsibility of the DEVELOPER to protect any adjoining owner's property from damage caused by the DEVELOPER's activities, such as demolition, underpinning, excavation, and/or related activities.

3. RIGHT TO A NEGOTIATED LICENSE AGREEMENT: You are well advised to hire an experienced construction attorney to negotiate the license agreement. You are additionally advised to hire an engineer of your choice to review plans provided by the DEVELOPER, in order to determine whether the work proposed jeopardizes your property, and to conduct an informed negotiation of the license agreement, including protective measures for your property, to be installed at the DEVELOPER's expense, including but not limited to monitoring of any movement of your property through the installation of vibration monitors and crack gauges, and limitations on permissible hours of work. The license agreement should provide that the DEVELOPER obtain required insurance coverage and indemnify you for any damages you or your property may sustain. The negotiation may provide that the DEVELOPER reimburse you for your attorney's and engineer's fees. Your attorney will also review the DEVELOPER's insurance policy to ensure proper and required coverage and to check for any exclusions to required coverage and/or any exclusions prohibited under Section 3309.2 of the New York City Building Code or Section 100-08 of the Rules of the City of New York.

4. IF A LICENSE AGREEMENT CANNOT BE AGREED UPON: Under the New York City Building Code and applicable case law, an owner of adjoining property cannot simply refuse to enter into a license agreement with a DEVELOPER unless the structural engineer selected by such adjoining property owner's attorney determines that the proposed activities of the DEVELOPER will endanger such adjoining property owner's property. In the event that an adjoining property owner and the DEVELOPER cannot agree on a license agreement, or if such adjoining property owner refuses to discuss the same, the DEVELOPER has the right to file a court proceeding pursuant to Section 881 of the Real Property Actions and Proceedings Law, asking that the court compel such adjoining property owner to permit access to their property. In the event that the court rules in favor of the DEVELOPER, the adjoining property owner will be compelled to permit the access requested, and the burden of protecting such adjoining property then shifts to the owner of such property. In this instance, the adjoining owner is not generally entitled to recover legal fees and may not be granted a license fee by the court. It is thus often in the best interest of the adjoining owner to negotiate a license agreement with DEVELOPER.

5. RIGHT TO A PRECONSTRUCTION SURVEY: No excavation work of a depth of 5 feet to 10 feet within 10 feet of an adjacent building, or an excavation over 10 feet anywhere on the site shall commence until the DEVELOPER has documented the existing conditions of all adjacent buildings in a preconstruction survey, pursuant to Section 3309.4.3 of the New York City Building Code. The DEVELOPER must obtain a license agreement in order to access to the adjacent property to document its condition. Section 3309.4.4 of the New York City Building Code also sets out monitoring requirements, and particular protections for adjacent historic structures that are contiguous to a lateral distance of 90 feet.

6. RIGHT TO INSURANCE UNDER THE DEVELOPER'S POLICY: Homeowner's insurance policies do not include coverage for earth movement-related activities or the consequences of the same. Any exclusion of coverage by the DEVELOPER's insurance policy of any of the DEVELOPER's activities on

the work site is prohibited under Section 101-08 of the Rules of the City of New York. Your attorney should therefore review the policy carefully for compliance, before you sign a license agreement.

NONE OF THE ABOVE IS TO BE CONSTRUED AS LEGAL ADVICE. Your attorney should also be aware of, and research, any relevant New York City Code amendments and current case law on the subjects above, which may affect his or her representation in the particular circumstances of your case. THEREFORE, upon receiving this notice, you should immediately retain competent legal counsel, with expertise in construction law, to negotiate a license agreement with the DEVELOPER."

5. The department of buildings shall not grant any permit to a developer whose permit application includes demolition, construction, excavation, earth movement, alteration, and/or encroachment on the property of an adjoining owner requiring either a license agreement or permission from a court pursuant to a final decision in a proceeding under section eight hundred eighty-one of the real property actions and proceedings law, unless and until said developer provides to the department of buildings:

(i) proof that the bill of rights and notification was mailed via certified mail to all adjoining owners; and

(ii) either (1) an executed and notarized copy of a license agreement between the developer and any and all adjoining owners, allowing access required for said demolition, construction, excavation, alteration, and/or encroachment; or (2) a copy of a final order from a court of competent jurisdiction in a proceeding pursuant to section eight hundred eighty-one of the real property actions and proceedings law permitting required access to the adjoining property, as well as said demolition, construction, excavation, alteration, and/or encroachment.

6. Any application submitted by a developer for a change or amendment to a permit application that alters its previously filed plans for which a permit has already been filed and/or granted by the department of buildings as set forth in subdivision five of this section shall require such developer to notify any and all adjoining owners of such application for an amendment by certified mail. Such notification shall be delivered to any adjoining owners not less than sixty days prior to any permit, approval, or grant of permission from the department of buildings for any and all amendments or changes to original plans sought by such developer, and shall require such developer to secure either an amended and executed license agreement, or a final ruling by a court pursuant to a proceeding brought under section eight hundred eighty-one of the real property actions and proceedings law, permitting the change of plans sought by such developer, subject to the requirements of subdivision five of this section, as a condition precedent to the grant by the department of buildings of permission to amend or change such developer's original plans pursuant to which a permit was initially granted.

7. Copies of the bill of rights shall be provided by the commissioner to all state and local elected officials, community boards, and any other organizations as the commissioner shall deem appropriate.

8. The bill of rights shall have appended to it the following information, in addition to any other information the commissioner shall deem appropriate:

(i) contact information for construction attorneys and structural engineers for use by adjoining owners and developers;

(ii) a list of the services such attorneys and engineers can be expected to provide;

(iii) a schedule of any "homeowner's rights" held by the department of buildings at its borough offices in New York city to review plans submitted by developers, and the addresses of such offices; and

(iv) contact information and other resources within the department of buildings or city emergency services related to demolition, excavation, earth movement, underpinning and encroachment, development plans, and permits in the event of damage caused by a developer that may require an immediate stop work order or other preventative measures by either the department of buildings or city emergency services.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.