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What you should know about sprinkler retrofitting

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When Henry Parmalee invented the first practical automated sprinkler head in 1874, to protect his piano factory against both fires and the overreaching fire insurance fees then charged for fire insurance, he had no idea that, 136 years later, he would achieve in the commercial real estate market of the City of New York what perhaps all of us long for on some level: universal acceptance.

Local Law 26, implemented as a recommendation of the World Trade Center Building Code Task Force, convened by Mayor Bloomberg to address the dreadful building failures experienced at the World Trade Center on 9/11, requires that all building owners retrofit their offices with several new layers of building safety requirements by July 1, 2019.

Local Law 26, among its directives, requires installation of photo luminescent markings in exits doors and stairways; installation of independent power sources; an orchestrated system of exit plans and fire stairways; door

installations; air intake shut offs; and perhaps the most costly new requirement of all: retrofitting all office buildings above 100 feet in height with sprinkler systems. The Building Department estimates that there are between 200 and 400 such buildings within the City of New York which will require such retrofitting.

So what's the rush? After all, the law, enacted in 2004, gave property owners 15 years to comply, and we've still got almost ten years left.

It is not unusual for the term of a commercial lease to be 10 years or longer. If only through future renewals, commercial leases being negotiated and drafted today, may very well extend to and encompass the period by which full compliance must be met. So this seemingly far off date may have far more impact, today, than one might suspect.

Before they know it, landlords and tenants will be faced with the oldest question since King John of England created the landlord tenant relationship when he conveyed property rights to our landlord antecedents through the Magna Carta: Who will pay for it?

The party who pays for the Local Law 26 retrofitting work will probably be the party who is less aware of the impending

obligations the local law creates.

Let's talk tenants. If they are unaware of this law and they do not plan ahead, they could face an unwelcome additional cost and, even worse, a major interruption in their tenancy while the sprinklers are being installed. A typical office lease permits passing this cost onto tenants within the ambit of "operating expense," unless the lease explicitly states otherwise.

Even if the landlord makes a representation that he is in compliance with laws as of the date of the lease, and further agrees that expense for compliance with laws in effect prior to the date of the lease will not be passed onto the tenant, the expense of retrofitting sprinklers systems may entitle a landlord to pass on the cost of compliance to the tenant as compliance with the law is not required until July, 2019.

The uninformed and unprepared tenant will have no clue that the generic language in their lease may involve the payment for and installation of a sprinkler system; and, in such event, at some point during the lease term, the tenant may wonder how, once again, he let the landlord pass on an unexpected burden to the tenant.

So how can tenants protect themselves?

By making sure that the legal compliance and operating expense provisions in their leases preclude the landlord's passing on such installation expense to the tenant and preclude, too, the installation of the sprinklers in the premises during the tenant's business hours.

Lawyers for landlords, on the other hand, should draft their leases to pass through the cost of this legal compliance to their tenants and, equally important, to ensure the right to future access for whatever work may be required.

The party who bears the burden of the sprinkler expense will probably be the party who is less aware of the impending requirements of 2019. Landlords and tenants each have the opportunity to address this discrete issue to their satisfaction if they are aware of the retrofitting obligation and address it in their leases.

While, Henry S. Parmalee, the owner and landlord of the The Mathushek Piano Manufacturing Co., was the first landlord to install an automatic sprinkler system to fight fires, unless tenants educate themselves to the impending obligations of Local Law 26, Henry may have been, as well, the last landlord to pay for it.