Committee on Small Business

 Michael Kurtz, Policy Analyst

 Irene Byhovsky, Legislative Counsel



###### **THE COUNCIL OF THE CITY OF NEW YOK**

**Committee Report of the Governmental Affairs Division**

**Jeffrey Baker, Legislative Director**

**Rachel Cordero, Deputy Director, Governmental Affairs Division**

**Robert Calandra, Assistant Deputy Director, Government Affairs Division**

**COMMITTEE ON SMALL BUSINESS**

**Hon. Mark Gjonaj, Chair**

##### March 18, 2019

**INT. No. 1472-A:** By Council Members Rosenthal, the Speaker (Council Member Johnson) and Levine

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of small business services to maintain a database of commercial properties

**INT. No. 1471:** By Council Members Rosenthal, the Speaker (Council Member Johnson), Yeger and Levine

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of small business services to offer certain business assistance

**INT. No. 1467:** By Council Members Gjonaj and Levine

**TITLE:** A local law to amend the administrative code of the city of New York, in relation to the creation of an interactive website that provides businesses with information about applicable laws, rules and related penalties and fines

**INT. No. 1466:** By Council Members Espinal, Gjonaj and Yeger

**TITLE:** A Local Law in relation to the creation of a regulatory review panel to review provisions of the administrative code of the city of New York, the rules of the city of New York, the New York city health code, the New York city construction codes and state law and recommend cure periods for violations of certain provisions

**INT. No. 1473:** By Council Members Rosenthal and Rivera, the Speaker (Council Member Johnson), Kallos and Levine

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the registration of vacant storefront property

**INT. No. 1470:** By Council Members Levine, Rivera, Powers, Rosenthal and Ayala

**TITLE:** A local law to amend the administrative code of the city of New York, in relation to providing legal services to small business owners facing eviction proceedings

**INT. No. 1049:** By Council Members Rivera, the Speaker (Council Member Johnson), Yeger, Ampry-Samuel, Levin and Levine

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of small business services to assess the state of storefront businesses

**INT. No. 1408:**  By Council Members Espinal, Cumbo and Chin

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to establishing an affordable retail space requirement at city financially assisted development projects

**INT. No. 1410-B:** By Council Member Gibson

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring a certification of no harassment prior to the approval of construction documents or the issuance of permits for demolition or renovation of certain commercial buildings and broadening commercial tenant harassment to include acts or omissions causing a commercial tenant to vacate or to surrender or waive rights

1. **Introduction**

On March 18, 2019, the Committee on Small Business, chaired by Council Member Mark Gjonaj, will hold a hearing on a package of nine pieces of legislation designed to mitigate the challenges that small businesses face in securing affordable leases, competing with online retailers, and navigating New York City’s regulatory environment. Those invited to testify include representatives from the New York City Department of Small Business Services (“SBS”), owners of local retail establishments, small business advocates, Business Improvement Districts (“BIDs”), merchant associations and other community based economic development organizations.

The package includes the following bills: (1) Int. No. 1472-A by Council Member Rosenthal and the Speaker (Council Member Johnson), a local law to amend the administrative code of the city of New York, in relation to requiring the department of small business services to maintain a database of commercial properties; (2) Int. No. 1471 by Council Member Rosenthal, the Speaker (Council Member Johnson), a local law to amend the administrative code of the city of New York, in relation to requiring the department of small business services to offer certain business assistance; (3) Int. No. 1467 by Council Member Gjonaj, a local law to amend the administrative code of the city of New York, in relation to the creation of an interactive website that provides businesses with information about applicable laws, rules and related penalties and fines; (4) Int. No. 1466 by Council Members Espinal and Gjonaj, a local law in relation to the creation of a regulatory review panel to review provisions of the administrative code of the city of New York, the rules of the city of New York, the New York city health code, the New York city construction codes and state law and recommend cure periods for violations of certain provisions; (5) Int. No. 1473 by Council Members Rosenthal and Rivera, the Speaker (Council Member Johnson) and Kallos, a local law to amend the administrative code of the city of New York, in relation to requiring the registration of vacant storefront property; (6) Int. No. 1470 by Council Member Levine, a local law to amend the administrative code of the city of New York, in relation to providing legal services to small business owners facing eviction proceedings; (7) Int. No. 1049 by Council Member Rivera, a local law to amend the administrative code of the city of New York, in relation to requiring the department of small business services to assess the state of storefront businesses; (8) Int. No. 1408 by Council Member Espinal, a local law to amend the administrative code of the city of New York, in relation to establishing an affordable retail space requirement at city financially assisted development projects; and (9) Int. No. 1410-B by Council Member Gibson, a local law to amend the administrative code of the city of New York, in relation to requiring a certification of no harassment prior to the approval of construction documents or the issuance of permits for demolition or renovation of certain commercial buildings and broadening commercial tenant harassment to include acts or omissions causing a commercial tenant to vacate or to surrender or waive rights.

1. **Background**

New York City can be a challenging place for small businesses to operate. In addition to adhering to occasionally complex regulatory schemes enforced by multiple City agencies, business owners confront hurdles including rising rents, taxation, competition from chain stores and e-commerce retailers, and various zoning restrictions. Over the course of the last year, a slew of beloved local establishments across the city closed amid skyrocketing costs. Last January, Langan’s Bar in Midtown shut down when its landlord tripled the rent after 25 years of operation.[[1]](#footnote-1) Tortilla Flats, which had been a mainstay of the West Village since 1983, ceased operations last October due to a rent dispute.[[2]](#footnote-2) 2018 was also the final year for Cornelia Street Café, which had been a magnet for artists, poets, and intellectuals for more than 40 years. Even though demand was sufficient to book more than 700 shows per year at the venue, the café’s owner noted that its monthly rent of $33,000 was 77 times greater than it had been when it first opened[[3]](#footnote-3) It is worth noting, however, that prominent closures were not limited to bars and restaurants. Lincoln Plaza Cinemas, an independent theater that had been open for 37 years, screened its last film.[[4]](#footnote-4) In July, rising rents forced North Shore Hardware in Little Neck, which had been open for nearly 70 years, to shut down permanently.[[5]](#footnote-5)

1. *Rising Rents*

In recent years, New York City retailers have struggled to afford rent. Between 2006 and 2016, average Manhattan retail asking rents rose from $108 per square foot (psf) annually to $156, an increase of 44.4 percent.[[6]](#footnote-6) The most acute growth took place in Midtown South, where rents rose from $85 psf to $143 psf, an increase of 68.2 percent.[[7]](#footnote-7) However, rising prices are not limited to Manhattan. According to a 2017 report published by CPEX, a commercial real estate company, the number of major Brooklyn retail corridors where floor space costs $100 or more psf has risen from three in 2007 to 15 in 2017, an increase of 400 percent.[[8]](#footnote-8) This trend has spanned neighborhoods including Park Slope, Williamsburg, Cobble Hill, Downtown Brooklyn, Brooklyn Heights and Boerum Hill.[[9]](#footnote-9)

1. *Taxation*

Taxation issues also pose difficulties for New York City retailers. For years, business owners and advocates lamented the commercial rent tax (CRT), a 3.9 percent levy on annual rent applied to Manhattan businesses that pay an annualized base rent of $250,000 or more.[[10]](#footnote-10) In 2017, the CRT accounted for more than $800 million in revenue for the City.[[11]](#footnote-11) However, opponents of the tax, such as the New York City Hospitality Alliance and the Manhattan Chamber of Commerce, argued for its abolition on the grounds that it placed a geographically-arbitrary burden on businesses that were already struggling to afford to stay in operation.[[12]](#footnote-12) In November of 2017, the Council passed, and the Mayor signed, legislation that effectively raised the threshold for the tax to $500,000 in annual rent.[[13]](#footnote-13) As a consequence of this change, approximately 2,000 businesses will no longer pay the tax.[[14]](#footnote-14)

1. *Competition with Chain Stores*

In some respects, competing with chain stores can place “mom-and-pop” retailers at a competitive disadvantage. Franchisees receive substantial assistance from parent companies in acquiring equipment, supplies and marketing products. These advantages mean that operating an outlet of a nationally-known business can be highly lucrative. According to QSR Magazine, which provides research and information about the fast-food industry, Panera, McDonalds, Chipotle, Wendy’s and Burger King all reported average sales per unit of more than $1.3 million in 2016.[[15]](#footnote-15) Statistics from the Center for an Urban Future (CUF) indicate that 2017 was the ninth consecutive year where there was a net increase in national chain stores citywide.[[16]](#footnote-16) For the ninth consecutive year, Dunkin’ Donuts has the largest presence of any national retailer, with 612 stores throughout the city. MetroPCS, Subway, Starbucks and T-Mobile complete the top five chain stores, with 445, 433, 317 and 236 locations, respectively.[[17]](#footnote-17) The Bronx, Manhattan, Brooklyn, and Queens all had more chain outlets in 2017 than they did in 2016.[[18]](#footnote-18) Between 2008 and 2017, the fastest-growing categories were frozen yogurt (283 percent), cell phones (267 percent), grocery stores (220 percent), department stores (144 percent) and wholesale clubs (117 percent).[[19]](#footnote-19)

1. *Rise of E-commerce*

Additionally, the rise of e-commerce and the restrictions posed by zoning regulations cause difficulties for local business owners. Nationwide, e-commerce now accounts for approximately 10 percent of all retail sales, a significant increase from its share of less than one percent in 2000.[[20]](#footnote-20) Moreover, between the third quarter of 2013 and the third quarter of 2016, the growth rate of online retail sales grew almost 16 percent year-over-year while brick-and-mortar retail stagnated.[[21]](#footnote-21) Between 2010 and 2016, the number of e-commerce jobs in New York City doubled to nearly 10,000.[[22]](#footnote-22) The City has not yet conducted a comprehensive, longitudinal study of the specific disruptive impact that e-commerce has had on traditional retail.[[23]](#footnote-23) Moreover, more than eight percent of all retail space located in the city are in residential districts that lack commercial overlays, which are enhancements to residential districts that allow for limited commercial usage on lower floors.[[24]](#footnote-24) However, if a business operates in an area that lacks a commercial overlay, it may not expand. These spaces are known as “non-conforming” to zoning and are illegal for commercial use if they are left vacant for two years.[[25]](#footnote-25) Brooklyn has the largest number of these types of retail spaces, with more than eight million square feet, and it is followed by Manhattan, with just under five million square feet of this type of retail space.[[26]](#footnote-26)

1. *Need for Statistical Data*

In spite of these myriad difficulties, the City has not yet conducted a comprehensive, longitudinal study of the specific disruptive impact that e-commerce has had on traditional retail.[[27]](#footnote-27) However, a series of informal studies conducted by elected officials have shed some light on the issue of pervasive vacancies in the retail sector. In 2017, the “Bleaker on Bleecker” study published by the office of State Senator Brad Hoylman (D-Manhattan) found an 18.4 percent vacancy rate along Bleecker Street from 6th to 8th Avenues and a 9.8 percent overall vacancy rate along First Avenue from 10th to 23rd Streets, Second Avenue from 3rd to 14th Streets, and Eighth Avenue from 15th to 22nd Streets.[[28]](#footnote-28) A 2017 report from Manhattan Borough President Gale Brewer found 188 empty storefronts spanning the entirety of Broadway.[[29]](#footnote-29) Staff for Council Member Helen Rosenthal calculated vacancy rates of approximately 14 percent on Broadway and Amsterdam Avenues, both popular shopping corridors of the Upper West Side. Each of these efforts has highlighted a different aspect of the larger issue of vacancies, there is currently not enough data to ascertain the full scope of the issue.[[30]](#footnote-30)

1. **Legislative Analysis**

**Int. No. 1471**

This bill would require the New York City Department of Small Business Services (“SBS”) to provide small businesses with training and counseling relating to business systems, marketing, and pivoting to e-commerce. Business systems assistance could include training and counseling in establishing technological systems to efficiently deliver goods or services to customers, reduce costs and maximize profits. Marketing assistance could include training and counseling in preparing and executing marketing plans, developing pricing strategies, locating contract opportunities, negotiating contracts and utilizing varying public relations and advertising techniques. E-commerce assistance could include training and counseling in effectively selling products and services over the Internet or via mobile applications. SBS would also offer other related assistance as it deems necessary.

**Int. No. 1472-A**

This bill would require the City’s Department of Small Business Services (“SBS”) to establish a public online searchable database of commercial properties in the City, including information about each such property’s location, size, commercial use, availability, and monthly rent, as well as contact information for each property. Owners would be required to submit this information to SBS at least annually and every time a commercial property becomes vacant. SBS would also be required to establish a hotline and website to report noncompliant storefront property owners.

**Int. No. 1467**

This bill would require the Department of Small Business Services (“SBS”) to compile all of the rules, regulations, and laws that apply to small businesses currently operating in New York. The compilation would include descriptions of the rules, regulations and laws in plain language. This bill also requires that SBS update the compilation every 90 days and include language specifying when the compilation was last updated. Finally, this bill would require SBS to place a disclaimer along with the compilation notifying users that the compilation is not a replacement for legal advice and that they should seek assistance from an attorney.

**Int. No. 1466**

This bill would require that the Department of Buildings, the Department of Consumer Affairs, the Department of Mental Health and Hygiene, the Department of Environmental Protection, the Department of Sanitation, the Department of Transportation, the Fire Department, the Department of Finance, and the Office of Administrative Trials and Hearings, convene a regulatory review panel and, with assistance from SBS, evaluate provisions of the Administrative Code, the Rules of the City of New York, the New York City Health Code, the New York City Construction Codes and relevant state laws, to determine whether provisions of these laws or rules can be repealed or whether cure periods can be implemented. These agencies would then draft a report based on their findings and make recommendations for legislation and rules implementing cure periods. The public will have an opportunity provide feedback on the report before it is submitted to the Council.

**Int. No. 1408**

This bill would require developers of economic development projects receiving $1 million or more in financial assistance from a City agency or City economic development entity to provide affordable ground floor retail space at such economic development projects. The City agency or City economic development entity that provides the financial assistance for the development project would determine the affordable retail space that applies to the City development project. In making such determination, the City or City economic development entity would conduct a neighborhood retail needs assessment, which incorporates information about the neighborhood and commercial environment of the location of the development project. The bill would provide the Commissioner of SBS with enforcement authority, including the authority to conduct investigations and assess remedies for violations committed by developers.

**Int. No. 1473**

This bill would require SBS to establish and maintain a vacant storefront registry. Such registration would include the location of such property, reasons for vacancy, the name of the owner of such property, the date upon which such property became vacant, the electronic mail address and phone number of an individual who shall be the contact person for such property, and any additional information as the department may require. Property owners would be required to register when a storefront property becomes vacant for more than 90 days. Failure to register would result in a civil penalty in the amount of $1,000 for every week or portion thereof.

The bill would also require SBS to maintain a searchable electronic database, which would include the location of property including the borough, community board district, and block and lot number; the date upon which such property became vacant; and any other information deemed relevant by department.

**Int. No. 1470**

This bill would require the Office of Civil Justice Coordinator to establish a program for small businesses by July 31, 2022. The program would provide access to legal assistance services to small business tenants facing eviction, subject to appropriation. Under the program, small business tenants would receive brief legal assistance and full legal representation no later than their first appearance in eviction proceedings.

The coordinator would estimate annually the expenditures required for each year of implementation of the program and publish a summary of any changes to such estimates for expenditures. The coordinator would also designate and annually review the performance of designated organizations providing legal assistance under this program.

**Int. No. 1049**

The bill would require SBS to complete an assessment of the state of storefront businesses in every community district in the City at least once every five years. These assessments would analyze a community district’s storefront business environment, such as the number and types of stores, vacancies, and opportunities for increasing retail diversity. At least every five years, each assessment would be aggregated into a City-wide storefront business assessment.

**Int. No. 1410–B**

This bill would create a three-year certification of no harassment (CONH) pilot program for commercial buildings, which would require building owners to apply for a CONH before obtaining Department of Buildings (DOB) approval for construction documents or permits for covered work. Buildings would be those where a court finds commercial tenant harassment or those in a community district with a city-sponsored neighborhood-wide rezoning in the 60 months before or after bill enactment. When an owner applies for a CONH, DOB and Department of Small Business Services would conduct a survey and investigation and assess if criteria defining harassment are met. If DOB denies or rescinds a CONH, the owner would pay a fine of $100 to $1,000 and not be approved for construction documents or permits for 12 to 24 months, with a building harassment index determining the fine and time period. The bill would also broaden the acts and omissions that constitute commercial tenant harassment.

1. **Conclusion**

The Committee looks forward to hearing testimony from the Administration and interested parties in relation to these bills, and to explore ways to help mitigate the challenges that small businesses face in securing affordable leases, competing with online retailers, navigating New York City’s regulatory environment, and creating a thriving environment for those businesses to survive, grow and succeed in the City.

Proposed Int. No. 1472-A

By Council Members Rosenthal, The Speaker (Council Member Johnson) and Levine (by request of the Manhattan Borough President)

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring the department of small business services to maintain a database of storefront properties

Be it enacted by the Council as follows:

Section 1. Chapter 10 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-1003 to read as follows:

§ 22-1003 Database of storefront properties. a. Definitions. As used in this section, the following terms have the following meanings:

Rent. The term “rent” has the same meaning as set forth in section 7-01 of title 19 of the rules of the city of New York.

Storefront property. The term “storefront property” means any property that may be predominantly used for the sale of goods and/or services directly to the public that is accessible directly from the street.

Tenant. The term “tenant” has the same meanings as set forth in section 7-01 of title 19 of the rules of the city of New York.

b. Database. The department of small business services shall establish and maintain a public online searchable database of all storefront properties within the city. Updates to such database shall be made no less than once every quarter. The department of small business services shall be authorized to secure such information from the department of finance as the commissioner of small business services determines to be necessary to comply with this section, and the department of finance shall provide such information, to the extent that it is available, in a timely fashion. Such database shall be posted on the website of the department of small business services, shall have the ability to produce reports by query, shall be published to the city’s open data portal, and shall include, but need not be limited to, the following information:

1. The street address of each storefront property;

2. A brief description of the type of each storefront property, including its current use;

3. The total floor space of each storefront property, expressed in square feet;

4. The name, address, electronic mail address and telephone number of an individual who shall be the contact person of each storefront property;

5. Whether such taxable premises is currently being leased or rented to a tenant;

6. The monthly rent for each storefront property; and

7. Where a storefront property is vacant, the last rent paid by a tenant for the use or occupancy of such storefront property and the current asking rent.

c. Owner’s obligation to register. Within 120 days of the effective date of the local law that added this section, on forms prescribed by the department of small business services, every owner of storefront property shall submit to the department of small business services the information required by subdivision b of this section for each storefront property. Thereafter, every such owner shall submit an updated form at least annually according to a schedule that shall be established by rule by the department of small business services, and shall submit an updated form every time a storefront property becomes vacant.

d. Penalty. Any owner who fails to comply with subdivision c of this section is liable for a civil penalty of not more than $1,000 for each violation. The penalty prescribed in this paragraph shall be imposed by the commissioner of small business services after notice and an opportunity to cure the failure to register. Notice shall be mailed to the owner at the address to which commercial rent property tax notices are sent or to the vacant property address at least 30 days prior to the assessment of the civil penalty.

e. Complaint hotline. The department of small business services shall establish and maintain a central telephone hotline and website to receive complaints alleging a storefront property is not included on the database created pursuant to this section or that an owner has failed to comply with the requirements of this section.

§ 2. This local law takes effect 1 year after it becomes law, except that the department of small business services shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

DFC

LS #9213

03/15/19, 3:15 p.m.

Int. No. 1471

By Council Member Rosenthal, The Speaker (Council Member Johnson) and Yeger and Levine

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring the department of small business services to offer certain business assistance

Be it enacted by the Council as follows:

Section 1. Chapter 10 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-1003 to read as follows:

§ 22-1003 Assistance to small businesses. a. The department shall provide training and counseling to small businesses, including but not limited to assistance relating to:

1. Business systems, which may include training and counseling in establishing systems, including but not limited to technological systems, to efficiently deliver goods or services to customers, reduce costs and maximize profits;

2. Marketing, which may include training and counseling in identifying and segmenting market opportunities, preparing and executing marketing plans, developing pricing strategies, locating contract opportunities, negotiating contracts and utilizing varying public relations and advertising techniques;

3. E-commerce, which may include training and counseling in effectively selling products and services by electronic means such as over the Internet or via mobile applications; and

4. Such other assistance as the commissioner may deem appropriate.

b. No later than November 1, 2019, and on or before November 1 annually thereafter, the department shall submit to the speaker of the council and post on the department’s website an annual report regarding training and counseling offered to small businesses during the preceding year pursuant to this section. Such report shall include, but need not be limited to:

1. The total number of training and counseling programs offered;

2. A general description of each training and counseling program offered, including the location where each such program was offered; and

3. The total number of people who participated in each training and counseling program.

§ 2. This local law takes effect immediately.

Int. No. 1467

By Council Members Gjonaj and Levine

..Title

A Local Law to amend the administrative code of the city of New York, in relation to the compilation and online publication of a list of all city laws and rules that apply to small businesses

..Body

Be it enacted by the Council as follows:

Section 1. Section 22-1002 of the administrative code of the city of New York, as added by local law number 208 for the year 2017, is amended to read as follows:

§ 22-1002 Online business supports. a. The commissioner shall post on the city’s website online business tools and resources, including but not limited to:

1. Tools provided by the department, which may include accounting, recordkeeping and bookkeeping resources; [and]

2. Such other tools and resources as the commissioner may deem appropriate[.]; and

3. A true and complete compilation in a searchable, machine-readable format or formats, of all sections of the charter, the administrative code and the rules of the city of New York that significantly impact a substantial number of small businesses operating within the city. Each relevant section of the charter, the administrative code and the rules of the city of New York shall include a brief description in plain language that is likely to be understood by owners of small businesses affected by such section of the charter, code or rules. The compilation shall be assembled with assistance from the relevant implementing city agencies, and the commissioner shall update the compilation every 90 days. The compilation shall contain, in a form prescribed by the commissioner by rule, the following information and disclaimers: (i) the compilation is for informational purposes only and not for the purpose of providing legal advice; (ii) the user should contact an attorney to obtain legal advice regarding any particular issue or problem facing the user, including advice about compliance with applicable sections of the charter, code or rules; (iii) the date of the last update to the compilation; (iv) the information in the compilation may have changed since the last update; (v) the date of the next update to the compilation; (vi) the user should independently verify the currentness and accuracy of the compilation by searching the city website for any changes; (vii) the city does not warranty the completeness, accuracy, content or fitness for any particular purpose of any information made available through the compilation, nor are any such warranties to be implied or inferred with respect to the information furnished therein; and (viii) the city is not liable for any deficiencies in the completeness, accuracy, content or fitness for any particular purpose or use of information made available in the compilation.

§ 2. This local law takes effect 90 days after it becomes law, except that the department of small business services shall take such measures as are necessary for the implementation of this local law, including the promulgation of any rules, before such date.

Int. No. 1466

By Council Members Espinal, Gjonaj and Yeger

A LOCAL LAW

In relation to the creation of a regulatory review panel to review provisions of the administrative code of the city of New York, the rules of the city of New York, the New York city health code, the New York city construction codes and state law and recommend cure periods for violations of certain provisions

Be it enacted by the Council as follows:

Section 1. There is hereby established a regulatory review, which shall be composed of the commissioner of buildings, the commissioner of consumer affairs, the commissioner of environmental protection, the commissioner of finance, the fire commissioner, the commissioner of health and mental hygiene, the commissioner of sanitation, the commissioner of transportation and the chief administrative law judge, or their respective designees.

§ 2. Within 120 days of the enactment of this local law, the regulatory review commission, with assistance from the commissioner of small business services, shall conduct a review of all provisions of the administrative code of the city of New York, the rules of the city of New York, the New York city health code, the New York city construction codes and state laws, the violation of which may be penalized by a civil penalty, fine or imprisonment, and that are enforced by any of the agencies represented on the regulatory review commission.

§ 3. The regulatory review panel shall prepare a report based on its findings, which shall include the following:

1. A description of each violation for which the regulatory review panel recommends be repealed or that a cure period or other opportunity for ameliorative action be provided prior to the imposition of a civil penalty, fine or imprisonment, and the basis for such conclusion; and

2. A list of all other violations established by the rules of each agency represented on the regulatory review panel which may be penalized by a civil penalty, fine or imprisonment, and for which no cure period or other opportunity for ameliorative action by the party or parties subject to enforcement prior to the imposition of a civil penalty, fine or imprisonment is recommended. This list shall identify, either on an individual-item or aggregate basis, the rationale for the absence of a cure period or other opportunity for ameliorative action.

§ 4. The regulatory review panel shall hold a public hearing and shall make a draft of its report available to the public for inspection and comment not less than 30 days before such hearing, on the website of each agency represented on the regulatory review panel and on the website of the department of small business services. In addition to taking public comments at such hearing, the regulatory review panel shall also accept comments by e-mail and regular mail until 12:00 a.m. of the day of the hearing. Any comments received by the regulatory review panel shall also be made available to the general public for inspection.

§ 5. Within 210 days of the enactment of this local law, the regulatory review panel shall submit a final report to the speaker of the council. This report may incorporate public comments and shall include the following:

1. A description of each violation the regulatory review panel recommends be repealed, or for which a cure period or other opportunity for ameliorative action is recommended to be provided prior to the imposition of a civil penalty, fine or term of imprisonment, and the basis for such conclusion. The regulatory review panel shall categorize the violations by severity and recommend appropriate cure periods for each violation on an individual-item or aggregate basis; and

2. A list of all other violations established by the rules of each agency represented on the regulatory review panel that may be penalized by a civil penalty, fine or imprisonment and for which no cure period or other opportunity for ameliorative action by the party or parties subject to enforcement prior to the imposition of a civil penalty, fine or term of imprisonment is recommended. This list shall identify, on an individual-item or aggregate basis, the rationale for the absence of a cure period or other opportunity for ameliorative action.

§ 6. This local law takes effect immediately.

This page is intentionally left blank

Int. No. 1473

By Council Members Rosenthal, Rivera, The Speaker (Council Member Johnson), Kallos and Levine

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring the registration of vacant storefront property

Be it enacted by the Council as follows:

Section 1. Chapter 10 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-1003 to read as follows:

§ 22-1003 Vacant storefront property. a. Definitions. For the purposes of this section, the term "storefront property" means any property that may be predominantly used for the sale of goods and/or services directly to the public that is accessible directly from the street.

b. 1. The owner of any storefront property within the city shall register with the department upon such property being unoccupied for 90 consecutive days, and thereafter, update the registration every 90 days until the property is leased or occupied. Such registration shall be in a manner to be determined by the commissioner but shall include, at a minimum, the location of such property, reasons for vacancy, the name of the owner of such property, the date upon which such property became vacant, the electronic mail address and phone number of an individual who shall be the contact person for such property, and any additional information as the department may require.

2. When ownership of a storefront property that has been vacant for more than 90 days is changed, the new owner of such property shall register in accordance with this section within 30 days of taking ownership of such property.

c. The department shall impose a reasonable fee necessary for administering the provisions of this section.

d. An owner who fails to register as required by this section shall be subject to a civil penalty of $1,000 for every week or portion thereof that there is a failure to register. Notice shall be mailed to the owner or owners, at the address to which commercial rent property tax notices are sent or to the vacant property address, at least 30 days prior to the assessment of the civil penalty. Both the department and the New York city department of buildings shall have the power to enforce this provision.

e. The department shall maintain a searchable electronic database of all storefront properties registered pursuant to this section. The department shall update such database not less than 30 days following any new registration, any renewal, or any changes to such registrations. Such database shall be posted on the department’s website, shall have the ability to produce reports by query, and shall be published to the city’s open data portal in a non-proprietary format that permits automated processing and shall include, but not be limited to, the following information:

i. the location of such property including the borough, community board district, and block and lot number;

ii. the date upon which such property became vacant; and

iii. any other information deemed relevant by department.

§ 2. This local law takes effect 90 days after it becomes law, except that the commissioner of small business services may take such actions as are necessary for its implementation, including the promulgation of rules, before such effective date.

This page is intentionally left blank

Int. No. 1049

By Council Members Rivera, the Speaker (Council Member Johnson), Yeger, Ampry-Samuel, Levin and Levine

..Title

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of small business services to assess the state of storefront businesses

..Body

Be it enacted by the Council as follows:

Section 1. Chapter 10 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-1003 to read as follows:

§ 22-1003 State of storefront businesses. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Storefront business assessment. The term “storefront business assessment” means an analysis of a community district’s storefront business environment, including, but not limited to, the following factors:

(i) district demographics;

(ii) number of storefront businesses;

(iii) types of storefront businesses and consumer spending by each such type;

(iv) number of vacant storefront properties;

(v) physical conditions of storefront properties;

(vi) built environment;

(vii) community involvement, strengths, challenges, and opportunities;

(viii) opportunities for promoting a vibrant mix of commercial uses and improving the built environment; and

(ix) a survey of storefront business owners.

Storefront business. The term “storefront business” means a business predominantly involved in the sale of goods and/or services directly to the public, which is accessible directly from the street.

b. Beginning July 1, 2018 and no less frequently than once every five years thereafter, the department shall complete a storefront business assessment in every community district in the city.

c. No later than July 1, 2023 and no less frequently than once every five years thereafter, the department shall aggregate all storefront business assessments into a citywide storefront business assessment covering the entire area of the city of New York.

d. The department shall post on its website each storefront business assessment, each aggregated storefront business assessment, and all disaggregated survey data underlying each storefront business assessment.

§ 2.  This local law takes effect immediately.

Int. No. 1408

By Council Members Espinal, Cumbo and Chin

..Title

A Local Law to amend the administrative code of the city of New York, in relation to establishing an affordable retail space requirement at city financially assisted development projects

..Body

Be it enacted by the Council as follows:

 Section 1. Chapter 1 of title 6 the administrative code of the city of New York is amended by adding a new section 6-143 to read as follows:

 § 6-143 Affordable retail space at city development projects. a. Definitions. For purposes of this section, the following terms have the following meanings:

Affordable retail space. The term “affordable retail space” means, in relation to a city development project, a percentage or amount of ground floor retail space that is leased or rented at a below market lease rate.

Chain business. The term “chain business” means an establishment that is part of a group of establishments that share a common owner or principal who owns at least 30 percent of each establishment where such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as defined in section 681 of the general business law.

City development project. The term “city development project” means a project undertaken by a city agency or a city economic development entity for the purpose of improvement or development of real property, economic development, job retention or growth, or other similar purposes where the project has received or is expected to receive financial assistance.

City economic development entity. The term “city economic development entity” means a not-for-profit organization, public benefit corporation or other entity that provides or administers economic development benefits on behalf of the city pursuant to paragraph b of subdivision 1 of section 1301 of the charter.

Commissioner. The term “commissioner” means the commissioner of small business services.

Covered developer. The term “covered developer” means any person receiving financial assistance in relation to a city development project, or any assignee or successor in interest of real property that qualifies as a city development project.

Department. The term “department” means the department of small business services.

Financial assistance. The term “financial assistance” means assistance that is provided to a covered developer for the improvement or development of real property, economic development, job retention and growth, or other similar purposes, and that is provided either (i) directly by the city, or (ii) indirectly by a city economic development entity and that is paid in whole or in part by the city, and that at the time the covered developer enters into a written agreement with the city or city economic development entity is expected to have a total present financial value of $1,000,000 or more. Financial assistance includes, but is not limited to, cash payments or grants, bond financing, tax abatements or exemptions (including, but not limited to, abatements or exemptions from real property, mortgage recording, sales and uses taxes, or the difference between any payments in lieu of taxes and the amount of real property or other taxes that would have been due if the property were not exempted from the payment of such taxes), tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of building, land or leases, or the cost of capital improvements related to real property that, under ordinary circumstances, the city would not pay for; provided, however, that any tax abatement, credit, reduction or exemption that is given to all persons who meet criteria set forth in the state or local legislation authorizing such tax abatement, credit, reduction or exemption is deemed to be as of right (or non-discretionary); and provided further that the fact that any such tax abatement, credit, reduction or exemption is limited solely by the availability of funds to applicants on a first come, first serve or other non-discretionary basis set forth in such state or local law does not render such abatement, credit, reduction or exemption discretionary. Financial assistance includes only discretionary assistance that is negotiated or awarded by the city or by a city economic development entity, and does not include as-of-right assistance, tax abatements or benefits. Where assistance takes the form of leasing city property at below market lease rates, the value of the assistance will be determined based on the total difference between the lease rate and a fair market lease rate over the duration of the lease. Where assistance takes the form of loans or bond financing, the value of the assistance will be determined based on the difference between the financing cost to a borrower and the cost to a similar borrower that does not receive financial assistance from a city economic development entity.

Project agreement. The term “project agreement” means a written agreement between a city agency or city economic development entity and a covered developer providing for financial assistance targeted to a city development project.

Retail business. The term “retail business” means any entity that is engaged primarily in the sale of consumer goods at a store within the city, but does not include a chain business. For the purposes of this definition, the term “consumer goods” means products that are primarily for personal, household or family purposes, including but not limited to appliances, clothing, electronics, groceries and household items.

b. Affordable retail space at city development projects required. 1. Covered developers shall provide affordable retail space for retail businesses in city development projects.

2. For each city development project, the city agency or city economic development entity that executed the project agreement relating to such city development project shall determine the affordable retail space that applies to such city development project, including (i) the percentage or amount of ground floor retail space, (ii) the below market lease rate and (iii) the term of the affordable retail space. In making such determination, the city agency or city economic development entity shall conduct a neighborhood retail needs assessment that incorporates information regarding the neighborhood and commercial environment related to the location of the city development project, including but not limited to existing retail stores, retail store vacancy rates, market lease rates, presence of chain businesses, level of retail diversity and types of retail businesses needed or lacking in the neighborhood.

c. Implementation and reporting. 1. No later than January 1, 2020, the commissioner shall promulgate implementing rules as appropriate and consistent with this section. Beginning one year after the effective date of the local law that added this section and annually thereafter, the commissioner shall post on the department’s website and submit to the speaker of the council a report on the implementation and enforcement of this section during the preceding calendar year.

2. Each covered developer shall submit to the department copies of leases or rental agreements, and any extensions, renewals, amendments or modifications thereof, providing for affordable retail space executed pursuant to this section.

d. Enforcement. 1. Whenever the commissioner has reason to believe that there has been a violation of this section, or upon receipt of a complaint in writing alleging a violation of this section, the commissioner shall conduct an investigation to determine whether there has been a violation. The commissioner shall provide written notice of the alleged violation to the covered developer and the relevant city agency or city economic development entity, and provide the covered developer an opportunity to be heard.

2. In the event that the commissioner finds that the covered developer has violated this section, the commissioner shall, in consultation with the relevant city agency or city economic development entity, take such actions against the covered developer as may be appropriate including but not limited to:

(a) Entering into an agreement with the covered developer allowing the covered developer to cure the violation;

(b) Finding the covered developer to be in default of the project agreement;

(c) Recovering from the covered employer the financial assistance disbursed or provided to the covered employer, including but not limited to requiring repayment of any taxes or interest abated or deferred;

(d) Declaring the covered developer ineligible to receive financial assistance; and

(e) Assessing actual and consequential damages.

e. Application to existing city development projects. This local law does not apply to any project agreement executed prior to the effective date of this local law, except that extension, renewal, amendment or modification of such project agreement, occurring on or after the effective date of this local law, that results in the grant of any additional financial assistance to a covered developer shall make such covered developer subject to the requirements of this local law.

§ 3. This local law takes effect 180 days after it becomes law.

MHL

LS #5651

01/23/19

This page is intentionally left blank

 Proposed Int. No. 1410-B

By Council Member Gibson

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring a certification of no harassment prior to the approval of construction documents or the issuance of permits for demolition or renovation of certain commercial buildings and expanding the acts and omissions that constitute commercial tenant harassment

Be it enacted by the Council as follows:

Section 1. The heading of article 505 of chapter 5 of title 28 of the administrative code of the city of New York, as added by local law 1 for the year 2018, is amended to read as follows:

CERTIFICATION OF NO HARASSMENT RESIDENTIAL PILOT PROGRAM

§ 2. Chapter 5 of title 28 of the administrative code of the city of New York is amended by adding a new article 506 to read as follows:

ARTICLE 506

CERTIFICATION OF NO HARASSMENT COMMERCIAL PILOT PROGRAM

**§ 28-506.1 Definitions.** As used in this article, the following terms have the following meanings:

**BUILDING HARASSMENT INDEX.** The term “building harassment index” means an index that the department and the department of small business services shall create and promulgate in rules, based on a survey of tenants of the pilot program commercial building and further investigation by the department and the department of small business services with respect to commercial tenant harassment. The index shall be used to determine the amount of a fine that the pilot program commercial building owner who is denied a certification shall pay and the period during which the department shall not approve a construction document or issue or renew a permit for covered categories of work in such building.

**CERTIFICATION OF NO HARASSMENT.** The term "certification of no harassment" means a certification by the department that no harassment of any lawful tenants of a pilot program commercial building occurred during the 60-month period prior to the filing of an application for such certification pursuant to this section.

**CITY-SPONSORED NEIGHBORHOOD-WIDE REZONING AREA.** The term “city-sponsored neighborhood-wide rezoning area” means an area of the zoning map for which:

1. Amendments to the zoning regulations pertaining to such area were proposed by the

 city;

2. The city planning commission approved or approved with modifications such amendments for a matter described in paragraph 3 of subdivision a of section 197-c of the charter;

3. The city planning commission decision was approved or approved with modifications by the council pursuant to section 197-d of the charter and is not subject to further action pursuant to subdivision e or f of such section; and

4. The amendments involved at least 10 blocks of real property in such area.

**COMMERCIAL BUILDING.** The term “commercial building” means a building in the city occupied for non-residential purposes pursuant to a valid commercial lease.

**COMMERCIAL TENANT.** The term “commercial tenant” means a person or entity lawfully occupying, pursuant to a lease or other rental agreement, any building or portion of a building (i) that is lawfully used for buying, selling or otherwise providing goods or services, or for other lawful business, commercial, professional services or manufacturing activities, and (ii) for which a certificate of occupancy authorizing residential use of such building or such portion of a building has not been issued.

**COMMERCIAL TENANT HARASSMENT.** The term “commercial tenant harassment” means any act or omission by or on behalf of an owner of a pilot program commercial building that causes or intends to cause a commercial tenant to vacate such building or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such building; and includes one or more of the following:

1. using force against or making express or implied threats that force will be used against a tenant or a tenant's invitee;

2. causing repeated interruptions or discontinuances of one or more essential services;

3. causing an interruption or discontinuance of an essential service for an extended period of time;

4. causing an interruption or discontinuance of an essential service where such interruption or discontinuance substantially interferes with a tenant's business;

5. repeatedly commencing frivolous court proceedings against a tenant;

6. removing from such building any personal property belonging to a tenant or a tenant's invitee;

7. removing the door at the entrance to such building; removing, plugging or otherwise

 rendering the lock on such entrance door inoperable; or changing the lock on such

 entrance door without supplying a key to the new lock to a tenant;

8. preventing a tenant or a tenant's invitee from entering such building;

9. substantially interfering with a tenant's business by commencing unnecessary construction or repairs on or near such building;

10. engaging in any other repeated or enduring acts or omissions that substantially interfere with the operation of a tenant's business including, but not limited to, being unresponsive to a tenant regarding lease negotiations or building operations or providing vague or untimely notices to a tenant regarding lease negotiations;

11. threatening any person lawfully entitled to occupancy of such unit based on such person’s actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, uniformed service, sexual orientation, alienage or citizenship status, status as a victim of domestic violence, status as a victim of sex offenses or stalking; or

12. requesting identifying documentation for any person lawfully entitled to occupancy or patronage of such unit that would disclose the citizenship status of such person.

**COVERED CATEGORIES OF WORK.** The term “covered categories of work” means the following categories of work at the pilot program commercial building:

1. Demolition of all or part of such building;

2. Change of use or occupancy of all or part of such building;

3. Any change to the layout, configuration, or location of any portion of such building;

4. An application for a new or amended certificate of occupancy; or

5. Such other types of alteration work to such building as shall be prescribed by rule of the commissioner.

**Exceptions:**

1. Work solely for the purpose of either (i) making the public areas of a pilot program commercial building accessible to persons with disabilities without altering the configuration of a building or (ii) making the interior or the entrance to such building accessible to persons with disabilities shall not be covered by this article.

2. Other categories of work that are excluded from the definition of covered categories of work by rule of the department shall not be covered by this article.

**ESSENTIAL SERVICE.** The term “essential service” means a service that a landlord must furnish to a commercial tenant pursuant to a lease or other written or oral rental agreement between such commercial tenant and landlord, or pursuant to applicable law.

**PILOT PROGRAM COMMERCIAL BUILDING.** The term “pilot program commercial building” means a commercial building included on the pilot program list.

**PILOT PROGRAM LIST.** The term “pilot program list” means a list of commercial buildings meeting the criteria set by the department that shall not include any building as shall be prescribed by rule of the commissioner. A building shall remain on such list until expiration of the local law that added this section. Such list shall be published and maintained on the websites of the department and the department of small business services.

**§ 28-506.2 Pilot program list.** The department shall compile and publish a pilot program list. The commercial buildings to be included on such list shall be promulgated by the department in rules and shall be limited to buildings:

1. In a community district that has been subject to a city-sponsored neighborhood-wide rezoning in the past 60 months or is subject to such rezoning after the date of enactment of the local law that added this section; or

2. Where there has been a final determination by any court having jurisdiction that an act of commercial tenant harassment, pursuant to section 22-903, was committed at such building within the 60 months prior to the effective date of the local law that added this section or on or after such date.

**§ 28-506.3 Certification of no harassment required.** A pilot program commercial building shall be required to obtain a certification of no harassment or a waiver of such certification as a condition of obtaining approval of construction documents or an initial or reinstated permit in connection with any covered categories of work.

**§ 28-506.4 Application and notice.** An application for a certification of no harassment shall be in such form and contain such information as shall be prescribed by the department. Upon receipt of such application, the department shall provide notice of the outstanding application.

**§ 28-506.4.1 Content of notice.** Notice of an outstanding application for a certification of no harassment shall contain the following:

1. The location and general description of the pilot program commercial building for which the certification is sought;

2. A description of the certification procedure and purpose;

3. The period of time covered by the inquiry, which shall be 60 months prior to the filing of the application for a certification of no harassment;

4. A description of conduct constituting commercial tenant harassment; and

5. That the owner and any tenants or former tenants of the building for which such certification is sought, any government agencies as designated by the department, local community-based organizations and the local community board may submit comments about the application in writing or orally at a designated location, within 45 days of the date of notice, which the department may, for good cause, extend for an additional 15 days.

**§ 28-506.4.2** **Method of notice.** The department shall provide notice as follows:

1. Publish notice in a publication of general circulation for a period of seven consecutive days;

2. Post notice in a conspicuous place at such building for which the certification is sought;

3. Publish notice in English and in any other language prevalent in the community district, as determined by the department and the department of small business services, including a statement that such notice is available in any covered language, as defined in subdivision j of section 8-1002; and

4. Mail notice to:

4.1. The owner of such building at the address provided on the application and the address provided in the last registration with the department;

4.2. The owner who appears on the last deed recorded on the records of the department of finance;

4.3. Any tenants that the department shall identify;

4.4. Any community groups designated by the department of small business services to survey such building;

4.5. The community board and council member representing the district in which such building is located; and

4.6. Any government agency designated by the department and department of small business services.

**§ 28-506.5 Investigation regarding harassment**. The department of small business services and its designated community groups may conduct a survey of the tenants of the pilot program commercial building with respect to commercial tenant harassment. The department of small business services shall provide a copy of the notice required by this subdivision to the tenants. Based upon the survey’s findings, the department and the department of small business services and other government agencies, as designated by the department, may determine it is necessary to conduct a further investigation with respect to commercial tenant harassment at such building.

**§ 28-506.6 Determination of harassment.** Upon the completion of any survey and further investigation, the department and the department of small business services shall assess whether any of the criteria that define commercial tenant harassment have been established and:

1. Determine that no commercial tenant harassment occurred within the stated period of time and grant a certification of no harassment;

2. Deny a certification of no harassment without a hearing if there has been a finding by any court having jurisdiction that there has been commercial tenant harassment, pursuant to section 22-903; or

3. Determine that commercial tenant harassment has occurred within the stated period of time and deny a certification of no harassment with a hearing at the office of administrative trials and hearings in which the department:

3.1. May receive testimony from tenants, community groups and any other interested

 parties;

3.2. Give notice of such hearing to the applicant in the manner prescribed by the office of

 administrative trials and hearings; and

3.3. Either grant or deny a certification, within 45 days after the office of administrative trials and hearings issues a report and recommendation.

**§ 28-506.7 Granting a certification of harassment.** Before a certification of no commercial tenant harassment may be granted, an applicant shall submit a sworn statement, in such form as the department shall prescribe, by all the owners of the pilot program commercial building representing that there will be no commercial tenant harassment by or on behalf of such owners. An owner may not use such statement to circumvent a future determination of harassment. The corporation counsel may institute any action or proceeding in any court of competent jurisdiction that may be appropriate for the enforcement of this representation and agreement. Nothing contained herein shall preclude a tenant of a building from applying on his or her own behalf for similar relief.

**§ 28-506.8 Denial or rescission of a certification.** Where the department has denied or rescinded a certification of no harassment for a pilot program commercial building:

1. The department shall mail such denial, accompanied by written findings indicating the grounds for denial to the applicant and owner of record, and file such in the office of the city register or the Richmond county clerk;

2. A final determination by the department shall be subject to review pursuant to article 78 of the civil practice law and rules; and

3. The building owner shall be subject to the following penalties, based on the building harassment index:

3.1. The department shall not approve construction documents or issue or renew permits for covered categories of work in such building for a period of 12 to 24 months; and

3.2. A fine of not less than $100 nor more than $1,000 dollars.

**§ 28-506.9 Suspension and rescission.** If the department has reasonable cause to believe that harassment occurred at the pilot program commercial building during the effective period of a certification of no harassment, the commissioner shall suspend the certification, and the department shall:

1. Not approve any construction documents or issue an initial or reinstated permit in connection with covered categories of work or, if such documents have been approved or such permit has been issued, issue a stop-work notice and order;

2. Mail notice of such suspension to the applicant, the owner of record of the building and the known commercial tenants of the building and file such notice with the city register or Richmond county clerk;

3. Commence a proceeding at the office of administrative trials and hearings, as soon as reasonably possible after a request for a hearing by an owner of a pilot program commercial building, but not later than 30 days after such suspension, in which the department shall:

3.1. Give notice of a hearing to the applicant and known tenants of such building in the manner prescribed by the office of administrative trials and hearings;

3.2. Receive testimony from tenants, community groups and other interested parties;

 and

3.3. Determine whether to rescind the certification within 45 days of receiving the report and recommendation from the office of administrative trials and hearings;

4. Not rescind a certification of no harassment and:

4.1. Immediately vacate any stop work notice and order issued by the department;

4.2. Mail notice of such determination to the owner of record of the pilot program commercial building and the known tenants of such building; and

4.3. File such notice with the city register or the Richmond county clerk; or

5. Rescind a certification without commencing a proceeding at the office of administrative trials and hearings, where there has been a final determination by any court having jurisdiction that an act of commercial tenant harassment, pursuant to section 22-903, occurred at the pilot program commercial building after certification was granted. The department shall provide notice of such rescission by:

5.1. Mailing notice of such determination accompanied by written findings indicating the grounds for such determination to the owner of record of such pilot program commercial building; and

5.2. Filing notice with the city register or the Richmond county clerk with such determination subject to review pursuant to article 78 of the civil practice law and rules.

**§ 28-506.10 Waiver.** The commissioner may grant a waiver of a certification of no harassment if such commissioner determines that harassment occurred at the pilot program commercial building during the 60-month period prior to the date of submission of an application for a certification, and that either:

1. While the owner of such building acquired title pursuant to a bona fide transaction that is not intended to evade the provisions of this section, the owner was not the owner during any period in which commercial tenant harassment occurred and did not at such building: (i) engage or participate in harassment; (ii) with intent that harassment be performed, agree with one or more persons to engage in or cause harassment; or (iii) with intent that another person engage in conduct constituting harassment, either solicit, command, importune or otherwise attempt to cause such person to engage in harassment; or

2. The owner of record of such building: (i) acquired such building by sale pursuant to foreclosure of a mortgage or pursuant to a deed in lieu of foreclosure of a mortgage, provided that such conveyance was a bona fide transaction for the purpose of enforcing the debt and not intended to evade the provisions of this section; and (ii) a certification of no harassment or a waiver was granted with respect to such building within a 60-day period prior to the date of the recording of the mortgage, and no suspension or rescission was recorded prior to such date.

**§ 28-506.10.1 Waiver pursuant to bona fide transaction.** In determining whether a transaction was bona fide, the commissioner may consider: (i) whether the owner of such building otherwise engaged or participated in commercial tenant harassment; (ii) with intent that such harassment be performed, agree with one or more persons to engage in or cause such harassment; or (iii) with intent that another person engage in conduct constituting such harassment, either solicit, command, importune or otherwise attempt to cause such person to engage in such harassment.

**§ 28-506.10.2 Contents of waiver.** Such waiver shall state the commissioner’s findings and be mailed to the applicant of the certification of no harassment and owner of record and be filed in the office of the city register or the Richmond county clerk.

**§ 28-506.10.3 Revocation of waiver.** The department may revoke such waiver if the department

finds commercial tenant harassment occurred after granting the waiver.

**§ 28-506.11 Required submittal documents.** The commissioner shall not approve any construction documents, nor issue an initial or reinstated permit in connection therewith, for a pilot program commercial building for the covered categories of work unless the applicant provides the department with the following:

1. A sworn affidavit by or on behalf of all the owners of such building, which states that there will be no harassment of the lawful tenants of such building by or on behalf of such owners during the construction period; and either of the following documents from the commissioner:

1.1. A current certification of no harassment that there has been no harassment of the lawful occupants of such building within the 60-month period prior to submission of an application for such certification; or

1.2. A waiver of such certification.

**§ 28-506.12 Time period for approval or rejection of construction documents**. The time period in which the commissioner shall approve or reject an application for construction document approval or resubmission shall commence from the date that the commissioner receives the documents required.

§ 3. Section 22-902 of the administrative code of the city of New York, as added by local law 77 for the year 2016, is amended to read as follows:

a. A landlord shall not engage in commercial tenant harassment. Except as provided in subdivision b of this section, commercial tenant harassment is any act or omission by or on behalf of a landlord that (i) [is intended to] causes or intends to cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such covered property, and (ii) includes one or more of the following:

1. using force against or making express or implied threats that force will be used against a commercial tenant or such tenant’s invitee;

2. causing repeated interruptions or discontinuances of one or more essential services;

3. causing an interruption or discontinuance of an essential service for an extended period of time;

4. causing an interruption or discontinuance of an essential service where such interruption or discontinuance substantially interferes with a commercial tenant’s business;

5. repeatedly commencing frivolous court proceedings against a commercial tenant;

6. removing from a covered property any personal property belonging to a commercial tenant or such tenant’s invitee;

7. removing the door at the entrance to a covered property occupied by a commercial tenant; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying a key to the new lock to the commercial tenant occupying the covered property;

8. preventing a commercial tenant or such tenant’s invitee from entering a covered property occupied by such tenant;

9. substantially interfering with a commercial tenant’s business by commencing unnecessary construction or repairs on or near covered property; [or]

10. engaging in any other repeated or enduring acts or omissions that substantially interfere with the operation of a commercial tenant’s business[.] ;

11. threatening any person lawfully entitled to occupancy of such unit based on such person’s actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, uniformed service, sexual orientation, alienage or citizenship status, status as a victim of domestic violence, status as a victim of sex offenses or stalking; or

12. requesting identifying documentation for any person lawfully entitled to occupancy or patronage of such unit that would disclose the citizenship status of such person.

b. A landlord’s lawful termination of a tenancy, lawful refusal to renew or extend a lease or other rental agreement, or lawful reentry and repossession of the covered property shall not constitute commercial tenant harassment for purposes of this chapter.

§ 4. Chapter 9 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-905 to read as follows:

§ 22-905 Certification of no harassment commercial pilot program. a. The department, with the department of buildings, shall administer the certification of no harassment commercial pilot program described in article 506 of chapter 5 of title 28 of the code.

§ 5. Twelve months after the pilot program required by § 2 of this local law has commenced, the department of buildings and the department of small business services, with the advice and assistance of any community group described in section 28-506.5 of the administrative code, shall conduct a study to evaluate the effectiveness of such program in reducing commercial tenant harassment. Such study shall be completed and a report shall be submitted to the Speaker of the Council no later than 24 months after the effective date of this local law. Such report shall, at a minimum, contain the following information:

a. The number of pilot program commercial buildings where the owner applied for a certification of no harassment disaggregated by whether the department of buildings issued such a certification or a waiver of such certification;

b. The location of such buildings where the department of buildings determined that such harassment occurred, disaggregated by community board and council district;

c. The metrics that the department of buildings and the department of small business services determine appropriate to determine the preventive impacts of such program in curtailing such harassment;

d. A determination, using such metrics, as to whether such program curtailed such harassment;

e. The estimated costs of such program to the city; and

f. Any recommendations for improving such program if such program is to continue.

§ 6. This local law takes effect 270 days after it becomes law except that the department of buildings and the department of small business services may promulgate rules or take other administrative action for the implementation of this local law prior to such date. This local law shall expire and is deemed repealed 36 months after it takes effect or 90 days following the submission of the report required by section 4 of this local law, whichever is later. Notwithstanding the repeal of this local law, the provisions of this local law shall remain in effect for any pilot program commercial building which submits an application for construction document approval pursuant to section 28-506.6 of the administrative code prior to the repeal of such section. This local law shall not apply to work relating to applications for construction document approval filed with the department of buildings prior to the inclusion of a commercial building on the pilot program list pursuant to section 28-506.2 of the administrative code, as added by section 2 of this local law.

NLB

LS 7582 7918

3/4/2019

.

This page intentionally left blank

Int. No. 1470

By Council Members Levine, Rivera, Powers, Rosenthal and Ayala

A Local Law to amend the administrative code of the city of New York, in relation to providing legal services to small business owners facing eviction proceedings

Be it enacted by the Council as follows:

Section 1. Section 26-1301 of chapter 13 of title 26 of the administrative code of the city of New York is amended to read as follows:

§ 26-1301 Definitions. For the purposes of this chapter, the following terms have the following meanings:

Brief legal assistance. The term “brief legal assistance” means individualized legal assistance provided in a single consultation by a designated organization to a covered individual or covered small business tenant in connection with a covered proceeding.

Coordinator. The term “coordinator” means the coordinator of the office of civil justice.

Covered small business tenant. The term “covered small business tenant” means a business which is:

(i)                     a lessee in a commercial tenancy located in the city;

(ii)                     independently owned and operated;

(iii)                     not dominant in its field,

(iv)                     consistent with the size eligibility standards for small businesses identified by the United States small business administration and contained within section 121.201 of subpart A of part 121 of title 13 of the code of federal regulations; and

(v)                     a respondent in a covered proceeding.

Covered individual. The term “covered individual” means a tenant of a rental dwelling unit located in the city, including any tenant in a building operated by the New York city housing authority, who is a respondent in a covered proceeding.

Covered proceeding. The term “covered proceeding” means any summary proceeding in housing court to evict a covered individual or in any other court of competent jurisdiction to evict a covered small business tenant, including a summary proceeding to seek possession for the non-payment of rent or a holdover, or an administrative proceeding of the New York city housing authority or any other court of competent jurisdiction for termination of tenancy.

Designated citywide languages. The term “designated citywide languages” has the meaning ascribed to such term in section 23-1101.

Designated organization. The term “designated organization” means a not-for-profit organization or association that has the capacity to provide legal services and is designated by the coordinator pursuant to this chapter.

Full legal representation. The term “full legal representation” means ongoing legal representation provided by a designated organization to an income-eligible individual and all legal advice, advocacy, and assistance associated with such representation. Full legal representation includes, but is not limited to, the filing of a notice of appearance on behalf of the income-eligible individual in a covered proceeding.

Housing court. The term “housing court” means the housing part of the New York city civil court.

Income-eligible individual. The term “income-eligible individual” means a covered individual whose annual gross household income is not in excess of 200 percent of the federal poverty guidelines as updated periodically in the federal register by the United States department of health and human services pursuant to subsection (2) of section 9902 of title 42 of the United States code.

Legal services. The term “legal services” means brief legal assistance or full legal representation.

§2. Chapter 13 of title 26 of the administrative code of the city of New York is amended by adding a new section 26-1302.1 to read as follows:

§ 26-1302.1 Provision of legal services to small businesses tenants. a. Subject to appropriation, the coordinator shall establish a program to provide access to legal services for covered small business tenants in covered proceedings and shall ensure that, no later than July 31, 2022:

1. all covered small business tenants receive access to brief legal assistance no later than their first scheduled appearance in a covered proceeding, or as soon thereafter as is practicable; and

2. all covered small business tenants receive access to full legal representation no later than their first scheduled appearance in a covered proceeding, or as soon thereafter as is practicable.

b. Subject to appropriation, no later than October 1, 2019, the coordinator shall establish a program to provide access to legal services to covered small business tenants in covered proceedings who have been served with charges for termination of tenancy and shall ensure that, no later than July 31, 2022, all such tenants receive access to such legal services.

c. The coordinator shall estimate annually the expenditures required for each year of implementation of the programs described by subdivisions a and b of this section. Beginning October 1, 2022 and no later than each October 1 thereafter, the coordinator shall publish a summary of any changes to such estimates for expenditures.

d. The coordinator shall annually review the performance of designated organizations.

                      e. The coordinator shall require each designated organization to identify the geographic areas for which such organization will provide legal services. For each such geographic area, the coordinator shall maintain a list of such organizations that provide such legal services.

f. Any legal services performed by a designated organization pursuant to this chapter shall not supplant, replace, or satisfy any obligations or responsibilities of such designated organization pursuant to any other program, agreement, or contract.

g. Nothing in this chapter or the administration or application thereof shall be construed to create a private right of action on the part of any person or entity against the city or any agency, official, or employee thereof.

§3. Subdivision a of section 26-1303 of chapter 13 of title 26 of the administrative code of the city of New York is amended to read as follows:

§ 26-1303 Public hearing. a. Following the establishment of the programs described by sections 26-1302 and 26-1302.1, the coordinator shall hold one public hearing each year to receive recommendations and feedback about such programs.

§4. Section 26-1304 of chapter 13 of title 26 of the administrative code of the city of New York is amended to read as follows:

§ 26-1304 Reporting. a. No later than September 1, 2018 and annually by each September 1 thereafter, the coordinator shall submit to the mayor and the speaker of the council, and post online, a review of the programs established pursuant to subdivision a of section 26-1302 and subdivision a of section 26-1302.1 and information regarding [its]the implementation of such programs, to the extent such information is available, including, but not limited to:

1. the estimated number of covered individuals and covered small business tenants;

2. the number of individuals receiving legal services, disaggregated by the following characteristics of such individuals:

i. borough and postal code of residence;

ii. age of head of household;

iii. household size;

iv. estimated length of tenancy;

v. approximate household income;

vi. receipt of ongoing public assistance at the time such legal services were initiated;

vii. tenancy in rent-regulated housing; and

viii. tenancy in housing operated by the New York city housing authority;

3. the number of small businesses receiving legal services, disaggregated by the following characteristics of such businesses:

i. borough and postal code of business;

ii. age of business;

iii. size of business; and

iv. estimated length of tenancy.

4. outcomes immediately following the provision of full legal representation, as applicable and available, including, but not limited to, the number of:

i. case dispositions allowing individuals or small businesses to remain in their residence or place of business;

ii. case dispositions requiring individuals or small businesses to be displaced from their residence or place of business; and

iii. instances where the attorney was discharged or withdrew.

4. non-payment and holdover petitions filed in housing court or other court of competent jurisdiction, warrants of eviction issued in housing court or other court of competent jurisdiction, and residential and small business evictions conducted by city marshals, disaggregated by borough.

b. No later than September 1, 2018 and annually by each September 1 thereafter, the coordinator shall submit to the mayor and the speaker of the council, and post online, a review of the programs established pursuant to subdivision b of section 26-1302 and subdivision b of section 26-1302.1 and information regarding [its]the implementation of such programs, to the extent such information is available, including, but not limited to:

1. the number of tenants of buildings operated by the New York City housing authority that received legal services pursuant to the program described in such subdivision, disaggregated by:

i. borough and postal code of residence;

ii. age of head of household;

iii. household size;

iv. estimated length of tenancy;

v. approximate household income;

vi. receipt of ongoing public assistance at the time such legal services were initiated; and

vii. type of legal service provided.

2. the outcomes of the proceedings immediately following the provision of such legal services, subject to privacy and confidentiality restrictions, and without disclosing personally identifiable information, disaggregated by the type of legal service provided; and

3. the expenditures for the program described by such subdivision.

§ 5. This local law takes effect immediately.

1. Noah Rothbaum, *The Last Night at Langan’s Bar and Restaurant*, The Daily Beast, January 18, 2018, <https://www.thedailybeast.com/the-last-night-at-langans-bar-and-restaurant>. [↑](#footnote-ref-1)
2. Karen Loew, *New York’s Small Businesses See a Glimmer of Hope Against Rising Rents*, November, 29 2018, <https://www.citylab.com/life/2018/11/sbjsa-new-york-city-retail-rents-rebny-city-council/576826/>. [↑](#footnote-ref-2)
3. Giovanni Russonello, *Cornelia Street Café, a Pillar of Greenwich Village Experimentation, Closes Its Doors*, January 4, 2019, <https://www.nytimes.com/2019/01/04/arts/music/cornelia-street-cafe-closes.html>. [↑](#footnote-ref-3)
4. Thomas Beller, *The Death of a Movie Theatre*, New Yorker, September 6, 2018, <https://www.newyorker.com/culture/personal-history/the-shuttered-lincoln-plaza-cinemas-is-a-cultural-crime-scene>. [↑](#footnote-ref-4)
5. Steven Goodstein, *Little Neck’s North Shore Hardware to Close its Doors*, Times Ledger, July 21 2018,

<https://www.timesledger.com/stories/2018/29/northshore_2018_07_20_q.html>. [↑](#footnote-ref-5)
6. *Planning for Retail Diversity: Supporting NYC’s Neighborhood Businesses*, December 2017, <https://council.nyc.gov/land-use/wp-content/uploads/sites/53/2017/12/NYC-Council-Planning-For-Retail-Diversity.pdf>. [↑](#footnote-ref-6)
7. *Id*. [↑](#footnote-ref-7)
8. 2017 Brooklyn Retail Report from CPEX, [https://www.scribd.com/document/337456586/2017-Brooklyn-Retail-Report-from-CPEX#from\_embed](https://www.scribd.com/document/337456586/2017-Brooklyn-Retail-Report-from-CPEX%23from_embed). [↑](#footnote-ref-8)
9. *Id*. [↑](#footnote-ref-9)
10. Changes to the New York City Commercial Rent Tax, CPA Journal, April 2018, <https://www.cpajournal.com/2018/04/03/changes-new-york-city-commercial-rent-tax/>. [↑](#footnote-ref-10)
11. Tom Corrie, *Big Tax Changes for the Big Apple: How the Amended Commercial Rent Tax May Impact You*, June 28, 2018, <https://www.friedmanllp.com/insights/big-tax-changes-for-the-big-apple-how-the-amended-commercial-rent-tax-may-impact-you->. [↑](#footnote-ref-11)
12. Andrew Rigie, *The tax that’s Killing Manhattan Businesses*, NY Daily News, October 6, 2016, <https://www.nydailynews.com/opinion/rigie-walker-tax-killing-manhattan-business-article-1.2818905>. [↑](#footnote-ref-12)
13. *Changes to the New York City Commercial Rent Tax*, CPA Journal, April 2018, <https://www.cpajournal.com/2018/04/03/changes-new-york-city-commercial-rent-tax/>. [↑](#footnote-ref-13)
14. *Freedom! 2,000 Businesses to Escape Commercial Rent tax*, The Real Deal, December 1, 2017, <https://therealdeal.com/2017/12/01/freedom-2000-businesses-to-escape-commercial-rent-tax/>. [↑](#footnote-ref-14)
15. 2017 QSR 50, QSR MAGAZINE, <https://www.qsrmagazine.com/content/qsr50-2017-top-50-chart?sort=2016_us_average_sales_per_unit_thousands&dir=desc>. [↑](#footnote-ref-15)
16. State of the Chains Report, The Center for Urban Future, December 2017, <https://nycfuture.org/pdf/CUF_StateOfChains_2017.pdf>. [↑](#footnote-ref-16)
17. *Id*. [↑](#footnote-ref-17)
18. *Id.* [↑](#footnote-ref-18)
19. *Id*. [↑](#footnote-ref-19)
20. Planning for Retail Diversity: Supporting NYC’s Neighborhood Businesses, <https://council.nyc.gov/land-use/wp-content/uploads/sites/53/2017/12/NYC-Council-Planning-For-Retail-Diversity.pdf>. [↑](#footnote-ref-20)
21. *Id*. [↑](#footnote-ref-21)
22. *Id*. [↑](#footnote-ref-22)
23. *Id*. [↑](#footnote-ref-23)
24. *Id*. [↑](#footnote-ref-24)
25. *Id*. [↑](#footnote-ref-25)
26. *Id*. [↑](#footnote-ref-26)
27. *Id*. [↑](#footnote-ref-27)
28. *It’s Bleaker on Bleecker Street: New Report Examines High-Rent Blight in Greenwich Village and Chelsea*, <https://www.nysenate.gov/newsroom/press-releases/brad-hoylman/its-bleaker-bleecker-street-new-report-examines-high-rent>. [↑](#footnote-ref-28)
29. Gale Brewer, *Manhattan Borough President, Testimony before the New York City Council on Economic Development*, December 14, 2017, <http://www.manhattanbp.nyc.gov/downloads/pdf/2017-12-14__Testimony%20on%20Commercial%20Vacancy.pdf>. [↑](#footnote-ref-29)
30. Diagnosing NYC’s Vacant Storefront Problem, <https://citylimits.org/2017/12/05/diagnosing-nycs-vacant-storefront-problem>. [↑](#footnote-ref-30)