Legislation Details (With Text)

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Sponsors:	Diana I. Ayala, Carlina Rivera, Crystal Hudson, Tiffany Cabán, Shahana K. Hanif, Pierina Ana Sanchez, Alexa Avilés, Sandy Nurse, Chi A. Ossé, Rita C. Joseph, Shekar Krishnan, Julie Won, Christopher Marte, Jennifer Gutiérrez, Kristin Richardson Jordan, Charles Barron, Amanda Farías, Carmen N. De La Rosa, Kevin C. Riley, Althea V. Stevens, Lincoln Restler, Farah N. Louis, Gale A. Brewer, Mercedes Narcisse, Public Advocate Jumaane Williams, (in conjunction with the Brooklyn Borough Presiden, (in conjunction with the Bronx Borough President)		
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Date	Ver.	Action By	Action	Result
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Int. No. 93

By Council Members Ayala, Rivera, Hudson, Cabán, Hanif, Sanchez, Avilés, Nurse, Ossé, Joseph, Krishnan, Won, Marte, Gutiérrez, Richardson Jordan, Barron, Farías, De La Rosa, Riley, Stevens, Restler, Louis, Brewer, Narcisse and the Public Advocate (Mr. Williams) (in conjunction with the Brooklyn and Bronx Borough Presidents)

A Local Law to amend the administrative code of the city of New York, in relation to the regulation of commercial rent

Be it enacted by the Council as follows:

Section 1. Title 22 of the administrative code of the city of New York is amended by adding a new chapter 13 to read as follows:

CHAPTER 13

COMMERCIAL RENT STABILIZATION

§ 22-1301 Application. This chapter applies to all commercial spaces with a lease or other rental

agreement that expires on or after July 1, 2022, whether or not such lease or rental agreement was in effect on such date.

§ 22-1302 Definitions. As used in this chapter, the following terms have the following meanings:

Administering agency. The term "administering agency" means a city agency that the mayor shall designate or establish to implement the provisions of this chapter.

Board. The term "board" means the commercial rent guidelines board established by subdivision a of section 22-1303.

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.

Commercial space. The term "commercial space" means a space used or occupied for non-residential purposes pursuant to a valid commercial lease or other rental agreement. Such term includes only retail stores of 10,000 square feet or less, manufacturing establishments of 25,000 square feet or less, and professional, services or other offices of 10,000 square feet or less.

Commissioner. The term "commissioner" means the head of the administering agency.

Owner. The term "owner" means any owner, lessor, sublessor or other person entitled to receive rent for the use or occupancy of any commercial space, or an agent thereof.

Pass-along. The term "pass-along" means any taxes, sewer, water or utility fee, or operating charges apportioned to a tenant in connection with the use or occupancy of any commercial space.

Rent. The term "rent" means any consideration, including but not limited to pass-alongs, received by the owner in connection with the use or occupancy of any commercial space.

§ 22-1303 Commercial rent guidelines board. a. Composition. There shall be a commercial rent guidelines board consisting of nine members appointed by the mayor as follows:

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1. One public member to serve as the chairperson of the board, who has had at least eight years of experience in finance or economics;

2. Two members representing commercial tenants that are not chain businesses;

3. Two members representing commercial landlords; and

4. Four public members, each of whom has had at least five years of experience in finance, economics, real property management or community development.

b. Terms. The members of the board, except the chairperson, shall serve staggered terms of two years. Four members of the board originally appointed, comprising one member representing tenants, one member representing owners and two public members, shall serve until January 1, 2024. The other members of the board originally appointed, excluding the chairperson, shall serve until January 1, 2025. Thereafter, all members shall serve two-year terms on the board until their successors have been appointed and qualified, except the chairperson, who shall serve at the pleasure of the mayor.

c. Removal. The mayor shall fill any vacancy that may occur in the same manner as the original appointment. A member of the board, other than the chairperson, may only be removed by the mayor for cause after an opportunity to be heard in person or by counsel, in the member's defense, upon at least 10 days' written notice.

d. Duties of the chairperson. The chairperson shall be the chief administrative officer of the board and, among the chairperson's powers and duties, the chairperson shall have the authority to employ, assign and supervise the employees of the board and enter into contracts for consultant services. The commissioner shall cooperate with the board and may assign personnel and perform such services in connection with the duties of the board as may reasonably be required by the chairperson.

e. Compensation. The members of the board shall be compensated on a per diem basis for no more than 25 days per year at a rate to be determined by the commissioner, and the chairperson shall be compensated on a per diem basis for no more than 50 days per year at a rate to be determined by the commissioner.

f. Guidelines. The board shall establish initial guidelines for commercial rent adjustments by July 1 next succeeding appointment of the last member of the board. Thereafter, the board shall establish annual guidelines to be filed in accordance with subdivision g of this section. In determining whether to adjust rents for commercial spaces subject to the commercial rent stabilization provisions of this chapter, the board shall consider, among other things:

1. The economic condition of the commercial real estate industry in the affected area, including such factors as:

(a) Commercial real estate taxes and sewer and water rates;

(b) Gross operating and maintenance costs (including insurance rates, governmental fees, fuel and labor costs);

(c) Costs and availability of financing (including effective rates of interest); and

(d) Overall supply of commercial spaces and overall vacancy rates;

2. Relevant data from the current and projected market values of commercial rentals in the affected area; and

3. Any other relevant data available to the board.

g. Annual filing. Not later than July 1 of each year, the board shall file with the city clerk its guidelines for the preceding calendar year, and shall accompany such findings with a statement of the maximum rate or rates of rent adjustment, if any, for all commercial spaces subject to the provisions of this chapter authorized for leases or other rental agreements commencing on the next succeeding October 1 or within 12 months thereafter. Such guidelines and statement shall be published in the City Record.

h. Public hearing. Prior to the annual adjustment of the level of rents provided for under subdivision d of this section, the board shall hold at least two public hearings for the purpose of collecting information relating to all factors set forth in subdivision f of this section, and any other relevant information as may be necessary for establishing the annual adjustment guidelines. The board shall provide notice of the date, time and location

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and a summary of the subject matter of the public hearings, to be published in the City Record daily for the period beginning eight days prior to the hearing date, and at least once in one or more newspapers of general circulation at least eight days immediately preceding the hearing date.

i. Limitation on rate adjustment. Maximum rates of rent adjustment shall not be established more than once annually for any commercial space subject to the provisions of this chapter. Once established, no such rate shall, within the one-year period, be adjusted by any surcharge, supplementary adjustment or other modification except as provided in section 22-1308.

§ 22-1304 Stabilization provisions. a. Upon renewal of a lease for commercial space, the rent charged for the first year of the new lease shall not exceed the initial legal regulated rent or legal regulated rent adjusted pursuant to section 22-1308 until the end of any lease or other rental agreement in effect on the effective date of the local law that added this chapter until such time as a different legal regulated rent shall be authorized pursuant to guidelines adopted by the board. No owner subject to the provisions of this chapter shall charge or collect any rent that exceeds the initial legal regulated rent or legal regulated rent adjusted pursuant to section 22-1308 until the end of any lease or other rental agreement in effect on the effective date of the local law that added this chapter until such time as a different legal regulated rent has been authorized pursuant to guidelines adopted by the board. For any lease exceeding beyond one year, the rent charged for any subsequent year shall not exceed the legal regulated rent as authorized pursuant to the most recent guidelines adopted by the board. If the rent charged for the first year of the new lease is less than the initial legal regulated rent or the legal regulated rent adjusted pursuant to section 22-1308, the rent charged for any subsequent year shall not exceed the first year rent adjusted by the rate authorized pursuant to the most recent guidelines adopted by the board.

b. The initial regulated rent for a commercial space subject to the provisions of this chapter is the rent charged in the lease or other rental agreement for such commercial space in effect on the effective date of the local law that added this chapter.

c. The initial regulated rent for a commercial space subject to the provisions of this chapter that is not

subject to a lease or other rental agreement on the effective date of the local law that added this chapter shall be the rent charged in the first lease or other rental agreement for such commercial space that becomes effective after the effective date of the local law that added this chapter, provided that such rent shall not include any pass-alongs. However, if a claim alleging commercial tenant harassment pursuant to chapter 9 of this title is brought against the owner by the previous tenant as the means by which the vacancy was effected and such previous tenant's claim is upheld by a court of competent jurisdiction, such owner shall be liable for damages of 10 times the proposed new lease's monthly rent or $50,000, whichever is greater, to be payable to the previous tenant, in addition to consequential damages and any other remedy available at law or equity.

d. Upon a finding of commercial tenant harassment pursuant to chapter 9 of this title, the rent for the new tenant shall be no higher than the rent that could have been charged to the previous tenant pursuant to subdivision a of this section, retroactive to the beginning of the new tenancy. All other terms and conditions of the lease shall conform to the provisions of subdivision a of this section.

§ 22-1305 Enforcement and procedures. a. Subject to the conditions and limitations of this section, any owner who, upon the complaint of a tenant, is found by the commissioner, after a reasonable opportunity to be heard, to have collected an overcharge above the rent authorized for a commercial space subject to the provisions of this chapter, is liable to such tenant for a penalty equal to three times the amount of such overcharge. If the owner establishes, by a preponderance of the evidence, that the overcharge was not intentional, the penalty shall be the amount of the overcharge plus interest assessed from the initial date of the overcharge. After a complaint of rent overcharge has been filed and served on an owner, the voluntary adjustment of the rent and/or the voluntary tender of a refund of rent overcharges shall not be considered by the commissioner as evidence that the overcharge was not willful.

b. The legal regulated rent for purposes of determining an overcharge is the rent indicated in the annual registration statement filed and served upon the tenant six years prior to the most recent registration statement, or, if more recently filed, the initial registration statement, plus in each case any subsequent lawful increases

and adjustments. The commissioner, in investigating complaints of overcharge and in determining legal regulated rent, shall consider all available rent history that is reasonably necessary to make such determinations. As to complaints filed within 90 days of the initial registration of a commercial space, the legal regulated rent is deemed to be the rent charged on the date six years prior to the date of the initial registration of the commercial space or, if the commercial space was subject to this chapter for less than six years, the initial legal regulated rent, plus in each case, any lawful increases and adjustments. Where the rent charged on the date six years prior to the date of the initial registration of the commercial space cannot be established, such rent shall be established by the commissioner based on, among other things, the factors set forth in paragraph one of subdivision f of section 22-1303.

c. Complaints under this section may be filed with the commissioner at any time but any recovery of overcharge penalties shall be limited to the six years preceding the complaint.

d. An owner found to have overcharged a tenant may be assessed the reasonable costs and attorney's fees of the proceeding and interest from the initial date of the overcharge at the rate of interest payable on a judgment pursuant to section 5004 of the civil practice laws and rules.

e. Upon the expiration of the period in which the owner may institute a proceeding pursuant to article 78 of the civil practice law and rules, a tenant may file and enforce an order of the commissioner awarding penalties in the same manner as a judgment.

f. The commissioner shall enforce the provisions of this section and is authorized to issue rules and regulations pursuant to this section.

§ 22-1306 Rent registration. a. Each owner of a commercial space subject to the provisions of this chapter shall register such space with the administering agency within 120 days of the effective date of the local law that added this chapter using forms prescribed by the commissioner. The information to be provided on such forms shall include the following:

1. The name and address of the building or group of buildings or development in which such

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commercial space is located and the tenant thereof;

2. The number of commercial spaces belonging to such owner in the building or group of buildings or development in which such commercial space is located;

3. The number of commercial spaces in such building or group of buildings or development subject to the provisions of this chapter;

4. The rent for the commercial space charged on the registration date; and

5. The square footage of each commercial space named pursuant to paragraph 1 of this subdivision.

§ 22-1307 Fees. a. The department of finance shall collect from the owner of each commercial space registered pursuant to section 22-1306 an annual fee in the amount of $100 per year for each commercial space subject to this law, in order to defray costs incurred in administering this law.

b. Failure to pay the fee imposed by subdivision a of this section constitutes a charge due to the city. All such fees due to the city constitute a debt recoverable from the owner and the city may commence an action or proceeding, file a lien upon the building or take any other lawful action for the recovery of such fees.

§ 22-1308 Application for adjustment of initial rent. Notwithstanding any other provision of this chapter, a tenant or owner may, within 60 days of the effective date of the local law that added this chapter or the commencement of the first tenancy thereafter, whichever is later, file with the commissioner an application for adjustment of the initial legal regulated rent for such commercial space. The commissioner may adjust such initial legal regulated rent upon a finding that the presence of extraordinary circumstances materially affecting the initial legal regulated rent has resulted in a rent which is substantially different from the rents generally prevailing in the same area for substantially similar commercial spaces.

§ 2. This local law takes effect 120 days after it becomes law, except that the administering agency, as defined in section 22-1303 of the administrative code of the city of New York as added by section one of this local law, shall take such measures as are necessary for the implementation of this local law, including the promulgation of rules, before such date.

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