**Committee on Small Business**

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###### **THE COUNCIL OF THE CITY OF NEW YORK**

**Committee Report of the Governmental Affairs Division**

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**COMMITTEE ON SMALL BUSINESS**

**Hon. Mark Gjonaj, Chair**

##### September 25, 2019

**INT. No. 1410-B:** By Council Members Gibson, Salamanca, King, Ayala, Rosenthal and Rivera

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to commercial tenant harassment

1. **Introduction**

On September 23, 2019, the Committee on Small Business, chaired by Council Member Mark Gjonaj, will hold a vote on a bill designed to strengthen existing protections for commercial tenants in the city: Introductory Bill Number 1410-B (“Int. No. 1410-B”), a local law to amend the administrative code of the city of New York, in relation to commercial tenant harassment. The Committee previously heard testimony on this bill from the Department of Small Businesses Services (“SBS”), the Department of Finance, the Manhattan Borough President, and other advocates and stakeholders. Their feedback informed the bill’s amendments. At the vote on September 23, the Committee voted 3 in favor, 0 opposed and 0 abstentions on the bill.

1. **Background**

Commercial tenants in New York City may suffer harassment from their landlords, as may be the case with residential tenants. In the commercial context, tenants may experience landlords engaging in behavior designed to force the tenant to vacate the property. The landlord may take such action as cutting off or overcharging for utilities, refusing to make needed repairs, or denying access to essential spaces such as entrances or storage areas.[[1]](#footnote-1) Commercial tenant harassment may be especially hard on immigrant tenants. A recent survey of almost 100 immigrant small business owners in New York City showed that 40% of respondents had been subject to that kind of harassment.[[2]](#footnote-2)

Commercial tenant harassment can be motivated by the landlord’s desire for increased profitability, for example, in neighborhoods subject to rezoning in which the landlord may potentially be able to benefit from redevelopment or higher rents.[[3]](#footnote-3) As with residential tenancy, commercial tenants may not be able to negotiate a written lease, but may rather be offered no lease at all, an oral lease or a month-to-month lease.[[4]](#footnote-4) A recent survey of immigrant small business owners found that 19% of respondents did not have a commercial lease in their name.[[5]](#footnote-5)

In an effort to continue to address these issues, Int. No. 1410-B would strengthen existing protections against commercial tenant harassment, which the Council had previously established by local law in 2016.

1. **Legislative Analysis**

**Int. No. 1410-B**

Int. No. 1410-B would amend Sections 22-901, 22-902 and 22-903 of the administrative code of the city of New York. The bill would redefine commercial tenant harassment as an act or omission by or on behalf of a landlord that “would reasonably cause” a commercial tenant to vacate their property, or surrender or waive any rights under their lease or other rental agreement. Further, it would amend the law to include three additional acts or omissions by or on behalf of a landlord that would constitute commercial tenant harassment: (i) threatening a commercial tenant 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; (ii) requesting identifying documentation that would disclose the citizenship status of a commercial tenant; or (iii) unreasonably refusing to cooperate with a tenant’s permitted repairs or construction activities.

This bill would also raise civil penalties for commercial tenant harassment to not less than ten thousand dollars and not more than fifty thousand dollars. Further, the bill would explicitly allow courts to issue an order to the Department of Buildings directing them not to approve construction documents, or issue or renew permits in cases where a commercial tenant has been the subject of commercial tenant harassment, for the following categories of work: (i) demolition of all or part of the property; (ii) change of use or occupancy or all or part of the property; and (iii) change to the layout, configuration or location of any portion of the property. The bill would provide exceptions to those categories of work for: (i) work conducted to make a portion of the property accessible to people with disabilities; (ii) work conducted solely to remediate hazardous or impending hazardous conditions, or to protect public health and safety; (iii) work performed pursuant to a lease or other agreement executed prior to such court order; (iv) work performed pursuant to an agreement with the commercial tenant; and (v) other categories of work excluded by rule.

Proposed Int. No. 1410-B

By Council Members Gibson, Salamanca, King, Ayala, Rosenthal and Rivera

A Local Law

To amend the administrative code of the city of New York, in relation to commercial tenant harassment

Be it enacted by the Council as follows:

Section 1. Section 22-901 of the administrative code of the city of New York, as added by local law number 77 for the year 2016, is amended by adding a new definition of “covered categories of work” in alphabetical order to read as follows:

**Covered categories of work.** The term “covered categories of work” means the following categories of work at a covered property:

1. Demolition of all or part of such covered property;

2. Change of use or occupancy of all or part of such covered property; or

3. Any change to the layout, configuration, or location of any portion of such covered property.

**Exceptions:**

1. Work conducted in whole or in part for the purpose of making any portion of such covered property accessible to persons with disabilities.

2. Work conducted solely for the purpose of remediating hazardous or impending hazardous conditions, or protecting public health and safety.

3. Work performed pursuant to a lease or other agreement executed prior to the issuance of an order pursuant to paragraph (2) of subdivision a of section 22-903.

4. Work performed pursuant to an agreement entered into by a tenant of such covered property.

5. Other categories of work that are excluded from the definition of covered categories of work by rule of the department.

§ 2. Subdivision a of section 22-902 of the administrative code of the city of New York, as added by local law number 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] would reasonably 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 a commercial tenant 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;

12. requesting identifying documentation that would disclose the citizenship status of a commercial tenant, an invitee of a commercial tenant or any person seeking entry to the covered property in order to patronize such commercial tenant; or

13. unreasonably refusing to cooperate with a tenant’s permitted repairs or construction activities.

§ 3. Subdivision a of section 22-903 of the administrative code of the city of New York, as added by local law number 77 for the year 2016, is amended to read as follows:

a. A commercial tenant may bring an action in any court of competent jurisdiction for a claim of commercial tenant harassment. If a court of competent jurisdiction finds that a landlord has engaged in commercial tenant harassment in relation to such commercial tenant, the court shall impose a civil penalty in an amount not less than [one] ten thousand dollars and not more than [ten] fifty thousand dollars for each covered property in which such commercial tenant has been the subject of commercial tenant harassment and may further:

1. issue an order restraining the landlord from engaging in commercial tenant harassment and directing the landlord to ensure that no further violation occurs; [and]

2. issue an order to the department of buildings directing such department not to approve construction documents for, or not to issue or renew permits for, covered categories of work in the covered property in which such commercial tenant has been the subject of commercial tenant harassment, for a period of time deemed appropriate by the court; and

3. award such other relief as the court deems appropriate, including but not limited to injunctive relief, equitable relief, compensatory damages, punitive damages and reasonable attorneys' fees and court costs.

§ 4. This local law takes effect immediately.

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1. *See* Camille Bautista*, Landlords Who Harass Commercial Tenants Would Be Penalized under New Bill*, DNA Info (July 24, 2015), <https://www.dnainfo.com/new-york/20150724/bed-stuy/landlords-who-harass-commercial-tenants-would-be-penalized-under-new-bill/>. [↑](#footnote-ref-1)
2. Association for Neighborhood and Housing Development, *The Forgotten Tenants: New York City’s Immigrant Small Business Owners*, p. 5 (March 2019), <https://anhd.org/report/forgotten-tenants-new-york-citys-immigrant-small-business-owners>. [↑](#footnote-ref-2)
3. Jose Giralt, *Months after Jerome Avenue Rezoning, an Eviction*, (July 23, 2018), available at <http://www.norwoodnews.org/id=26320&story=months-after-jerome-avenue-rezoning-an-eviction/>. [↑](#footnote-ref-3)
4. *Id.* [↑](#footnote-ref-4)
5. Association for Neighborhood and Housing Development, *The Forgotten Tenants: New York City’s Immigrant Small Business Owners*, p. 5 (March 2019), <https://anhd.org/report/forgotten-tenants-new-york-citys-immigrant-small-business-owners>. [↑](#footnote-ref-5)