

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2020**

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**No. 35**

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Introduced by Council Members Espinal, Cumbo, Chin, Rosenthal, Rivera, Kallos, Lander, Gjonaj, Levin, Ayala and Barron.

**A LOCAL LAW**

**To amend the administrative code of the city of New York, in relation to affordable retail space in financially assisted development projects, and to provide for the expiration of the provisions relating thereto**

*Be it enacted by the Council as follows:*

Section 1. Section 22-823 of the administrative code of the city of New York is amended by adding a new subdivision i to read as follows:

*i. Reporting on affordable retail space requirement in certain project agreements. 1. For purposes of this subdivision, the terms “affordable retail space,” “covered developer,” “covered development project,” and “project agreement” have the same meanings as set forth in subdivision a of section 22-825.*

*2. For covered development projects where the project agreement was executed during the preceding fiscal year, the annual report required by this section shall include:*

*(a) A description of any covered development project where the covered developer was required to provide affordable retail space pursuant to section 22-825;*

*(b) For each such project, the minimum amount of affordable retail space that such project was required to include, and the maximum below market lease rate permitted to be charged for such space;*

*(c) The number of covered development projects where a determination was made pursuant to paragraph 1 of subdivision b of section 22-825 that affordable retail space need not be provided;*

*(d) For each such covered development project, an explanation of the basis for such determination, including a summary of the results of each component of the neighborhood retail needs assessment, as set forth in subdivision a of section 22-825;*

*(e) The number of covered development projects where the covered developer was not required to provide affordable retail space pursuant to paragraph 3 of subdivision b of section 22-825; and*

*(f) For each such covered development project, a description of the community program, service or benefit, the provision of which the contracted entity determined would be hindered by the inclusion of an affordable retail requirement.*

*3. The annual report shall also include:*

*(a) Any finding by the contracted entity, during the preceding fiscal year, that a covered developer has failed to fulfill any obligation in the project agreement relating to providing affordable retail space; and*

*(b) Any action taken by such entity, during the preceding fiscal year, as a result of such finding.*

§ 2. Subchapter 2 of chapter 8 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-825 to read as follows:

§ 22-825 Affordable retail space at covered development projects. a. Definitions. For purposes of this section, the following terms have the following meanings:

*Adjusted by the CPI. The term “adjusted by the CPI” means, commencing January 1, 2021, the amount so adjusted shall be adjusted based upon the percentage change, if any, in the*

*consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor for the geographic region New York – Newark – Jersey City (1982-84 = 100), or any successor index thereto, from January 1, 2021, to January 1 of the year in which such adjustment is made.*

*Affordable housing project. The term “affordable housing project” means any project for the improvement or development of real property that contains a multiple dwelling where no less than 30 percent of the residential units are subject to a regulatory agreement, restrictive declaration or similar written instrument requiring that such units be maintained as affordable units for a period of no less than 30 years.*

*Affordable retail space. The term “affordable retail space” means a portion of space in a covered development project that is available for lease to a retail business at a below market lease rate.*

*Assisted living facility. The term “assisted living facility” means any facility utilized to provide or support assisted living, home care or hospice services licensed or certified pursuant to the public health law, the social services law or the mental hygiene law.*

*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 in such group and such establishments (i) engage in the same business or (ii) operate pursuant to franchise agreements with the same franchisor as such term is defined in section 681 of the general business law.*

*Consumer goods. The term “consumer goods” means products that are primarily for personal, household or family purposes, including but not limited to small appliances, clothing, electronics, groceries and household items.*

*Consumer services. The term “consumer services” means services that are primarily for personal, household or family purposes, including but not limited to food and drink establishments, personal services, medical services, repair services or household services.*

*Covered developer. The term “covered developer” means any person receiving financial assistance for a covered development project, unless such person is a not-for-profit corporation with an annual gross revenue of less than \$7,500,000, adjusted by the CPI, in each of the last five years.*

*Covered development project. The term “covered development project” means a project for the improvement or development of real property pursuant to a project agreement for the purpose of economic development, job retention or growth, or other similar purposes where such project has received or is expected to receive financial assistance valued at no less than \$15,000,000, adjusted by the CPI, and such project is expected to be greater than 750,000 square feet and to contain space available for lease to a retail business, except that a “covered development project” does not include any project located within an industrial business zone as such term is defined in section 22-626, or any project for a human or client services facility, a production facility, an affordable housing project, a life sciences facility, a photovoltaic system project, a health care facility or an assisted living facility, as such terms are defined in this section.*

*Financial assistance. The term “financial assistance” means any loans, grants, tax credits, tax exemptions, tax abatements, subsidies, mortgages, debt forgiveness, land conveyances for less*

*than appraised value, or other thing of value allocated, conveyed or expended by the city or by a contracted entity for a covered development project, other than as-of-right assistance, tax abatements or benefits, including but not limited to, benefits approved in accordance with sections 421-a or 489 of the New York state real property tax law, or any assistance provided in a project agreement, the amount of which is based upon an evaluation of as-of-right assistance, tax abatements or benefits for which the covered developer would have been eligible.*

*Health care facility. The term “health care facility” means a hospital, nursing home or residential health care facility as such terms are defined in section 2801 of the public health law, or any facility or institution certified under article 31 of the mental hygiene law.*

*Human or client services facility. The term “human or client services facility” means real property used for the provision of human or client services pursuant to a contract with any city, state or federal agency, public authority or public benefit corporation.*

*Life sciences facility. The terms “life sciences facility” means real property used for research, development, technology transfer and commercialization related to any life science field.*

*Neighborhood. The term “neighborhood” means the geographical area surrounding a covered development project up to one-quarter of a mile from such project.*

*Neighborhood retail needs assessment. The term “neighborhood retail needs assessment” means an assessment of the retail environment of a neighborhood, which shall include, but need not be limited to an examination of:*

*(a) The neighborhood’s existing retail stores, vacancy rates for property that could be leased for retail businesses and market lease rates for such property;*

*(b) The presence of chain businesses in the neighborhood;*

*(c) The level of retail diversity and the types of retail businesses needed or lacking in the neighborhood; and*

*(d) Any community feedback received relating to the covered development project, including community needs and priorities.*

*Photovoltaic system project. The term “photovoltaic system project” means a project to construct, maintain, alter or operate a photovoltaic system that is connected to the electrical system and operated in conjunction with the transmission and distribution facilities of an electric corporation.*

*Production facility. The term “production facility” means real property where no less than 30 percent of the square footage of such property is utilized for manufacturing, warehousing or distribution.*

*Project agreement. The term “project agreement” means a written agreement between the city or a contracted entity and a covered developer providing for financial assistance for a covered development project, provided that such agreement is administered by a contracted entity.*

*Retail business. The term “retail business” means any entity that is engaged primarily in the sale of consumer goods or consumer services at a store within the city, but does not include a chain business.*

*b. Affordable retail space at covered development projects required. 1. Prior to execution of a project agreement for a covered development project, a determination shall be made regarding whether affordable retail space for retail businesses must be provided in such project to meet an unmet need for consumer goods and consumer services in such neighborhood. Such determination*

*shall be based upon a neighborhood retail needs assessment and shall be made by the party entering into such project agreement with the covered developer or by the designee of such party.*

*2. Where such party or such party's designee determines, pursuant to paragraph 1, that affordable retail space in a covered development project must be provided, such party or such party's designee shall establish the minimum percentage of affordable retail space that such project shall include, the maximum below market lease rate for which such affordable retail space may be leased, and the eligible type of retail business that may lease such space, based on a consideration of the following factors:*

*(a) Retail diversity and unmet needs for consumer goods and consumer services in the neighborhood in which such covered development project is located;*

*(b) Market lease rates for retail businesses in such neighborhood; and*

*(c) Commercial vacancy rates in such neighborhood.*

*3. Such party or such party's designee may determine that a requirement for affordable retail space does not apply to a covered development project where such party or such party's designee determines that such requirement would substantially hinder the provision of any community program, service or benefit required by the project agreement.*

*c. Enforcement. 1. Within 30 days after the date by which 80 percent of space available for rent to a retail business in a covered development project has been leased, the covered developer for such project shall certify to the contracted entity administering the project agreement that such developer is in compliance with the terms of the project agreement relating to the provision of affordable retail space.*

2. *A contracted entity shall investigate any allegations that a covered developer has failed to comply with the terms of the project agreement relating to the provision of affordable retail space.*

3. *A finding that a covered developer has failed to provide affordable retail space as required by the project agreement may result in any of the following actions by the contracted entity administering such project agreement:*

*(a) Entering into an agreement with the covered developer requiring such developer to fulfill such terms;*

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

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

*(d) Reporting such failure by the covered developer in the report required by subdivision a of section 22-824.*

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

§ 4. This local law takes effect 180 days after it becomes law and expires and is deemed repealed seven years after it becomes law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on January 23, 2020 and returned unsigned by the Mayor on February 24, 2020.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 35 of 2020, Council Int. No. 1408-B of 2019 to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, presented to the Mayor and neither approved nor disapproved within thirty days thereafter.

STEPHEN LOUIS, Acting Corporation Counsel.