



Legislation Text

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Int. No. 2243-A

By Council Members Rivera, the Speaker (Council Member Johnson), Constantinides, Kallos, Chin, Rosenthal and Ayala

A Local Law to amend the administrative code of the city of New York, in relation to extending temporary personal guaranty protection provisions for commercial tenants impacted by COVID-19

Be it enacted by the Council as follows:

Section 1. Declaration of legislative intent and findings. a. The council finds and declares that:

1. The city is in the midst of a local, state, and federally declared disaster emergency due to a global pandemic. While the numbers increase daily, the 2019 novel coronavirus, or COVID-19, has killed over 2.5 million people worldwide, over 513,000 people in the United States, and about 47,200 people in New York state. Within the city itself, about 755,000 people have been infected with the disease and more than 29,000 people have likely died because of it.

2. Governments around the world, the country, and the state, including the city, have taken drastic measures to limit the spread of COVID-19. While many of these measures appear to have helped slow the progress of the disease, many have also contributed to a catastrophic impact on the city's economic and social livelihood.

3. For example, as part of the effort to stop the spread of COVID-19, the governor in March 2020 issued executive order numbers 202.3, 202.6, and 202.7. These orders, as subsequently amended and extended through other executive orders, and interpreted through guidance issued by the New York state departments of economic development and health, effectively prohibited restaurants, bars, gyms, fitness centers, movie theaters, non-essential retail stores, barbershops, hair salons, nail salons, tattoo or piercing parlors, and related

personal care services from operating with any indoor occupancy.

4. These operational limitations, while necessary to combat the spread of a global pandemic, have contributed to the severe economic damage suffered by the city. For example, the most recently available labor statistics from the New York state department of labor relating to the businesses subject to these orders indicate that:

(a) The city lost 131,300 jobs in the food services and drinking places subsector from February 2020 to December 2020, leaving employment in that subsector down 43.4% in December 2020 compared to December 2019. This includes a loss of 89,000 jobs in the full service restaurants industry between February 2020 and December 2020, which left employment in that industry down 54.4% in December 2020 compared to December 2019.

(b) Within the retail trade sector, the city lost about 25,200 jobs from the clothing stores industry, the furniture and home furnishings stores subsector, and the sporting goods, hobby, book, and music stores subsector between February 2020 and December 2020, which left employment in those industries and subsectors down 49.9%, 27.2%, and 17.6%, respectively, in December 2020 compared to December 2019.

(c) Within the personal and laundry services subsector, which includes barbershops, hair salons, and other personal care businesses, the city lost 19,900 jobs, leaving employment in that subsector down 30.7% in December 2020 compared to December 2019.

5. While businesses may be willing to weather the economic hardships imposed upon them by governmental measures to combat COVID-19 by either staying open or temporarily closing and later reopening, individual owners and other natural persons who personally guarantee the financial obligations of these businesses face a different and more substantial risk than losing revenue and profit. They risk losing their personal assets, including their possessions and even their own homes, transforming a business loss into a devastating personal loss. This is particularly a risk for small businesses, as the scale of the financial obligations of larger businesses generally renders having a natural person guarantee those obligations impracticable.

6. If these individual owners and natural persons are forced to close their businesses permanently now or to suffer grave personal economic losses like the loss of a home, the economic and social damage caused to the city will be greatly exacerbated and will be significantly worse than if these businesses are able to temporarily close and return or, failing that, to close later, gradually, and not all at once.

7. For the foregoing reasons, the council passed, and the mayor signed, local law number 55 for the year 2020 and local law number 98 for the year 2020, which provided and extended temporary protections to natural persons who personally guarantee the financial obligations of businesses subject to the substantial occupancy limitations imposed by the above-described executive orders issued by the governor. These protections are, however, due to expire on March 31, 2021.

8. As of March 31, 2021, these businesses will have been either prohibited from operating with any indoor occupancy at all, or subject to significant indoor occupancy restrictions, for over 12 months, and it is likely that such significant indoor occupancy restrictions will continue for the foreseeable future as the existing COVID-19 crisis has not yet subsided, new variants of COVID-19 have emerged in the city and elsewhere, and the rate at which the COVID-19 vaccine is being administered in the city indicates that it will take several months at a minimum to vaccinate enough of the population to achieve “herd immunity” to COVID-19 and its variants. As of March 9, 2021, only 623,719 adults in New York city had been fully vaccinated.

9. Extending the duration of the personal liability protections contained within local law number 98 for the year 2020 by three months, as this local law does, is intended to provide these businesses a reasonable recovery period with a duration that is comparable to the period of time that these businesses were forced to close or operate with significant limitations on indoor occupancy and thereby to provide them with an opportunity to not only survive but also to generate sufficient revenues to defray owed financial obligations.

10. As with local law number 55 for the year 2020 and local law number 98 for the year 2020, this local law does not, nor is it intended to, limit any other lawful remedies that a landlord may be able to seek against a commercial tenant itself, such as bringing suit against that tenant for damages; collecting or offsetting financial

obligations by using the revenues, inventory, equipment, or other assets of that tenant; or evicting or declining to renew the lease or rental agreement of that tenant.

b. For the foregoing reasons, the council finds that it is necessary and appropriate to extend the duration of the personal liability protections in local law number 55 for the year 2020 and local law number 98 for the year 2020.

§ 2. Paragraph 2 of section 22-1005 of the administrative code of the city of New York, as added by local law number 98 for the year 2020, is amended to read as follows:

2. The default or other event causing such natural persons to become wholly or partially personally liable for such obligation occurred between March 7, 2020 and [March 31, 2021] June 30, 2021, inclusive.

§ 3. The department of small business services, or another mayoral agency or office designated by the mayor, shall conduct an information and outreach campaign to educate commercial tenants affected by this local law about its protections.

§ 4. This local law takes effect immediately, provided that if it shall have become a law subsequent to March 31, 2021, this local law shall be retroactive to and deemed to have been in full force and effect as of such day.

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