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Int. No. 944

By Council Members Linares and Michels; also Council Member Boyland

A Local Law to amend the administrative code of the city of New York in relation to creating a small business lease program for establishing an environment for fair negotiation in order to determine reasonable lease terms.

Be it enacted by the Council as follows:

Section one. Legislative findings. The Council hereby finds that the small business sector remains volatile at a time when New York City is more dependent than ever on small businesses for job growth and revenues. One of the main reasons for such a volatility for landlords and tenants has resulted in unreasonable lease terms. The rental market, as it is constituted, weighs too heavily in favor of the landlords in a way that serves neither the general economic interests of New York City nor the specific interests of small businesses and other parties. The rental market is often not effective in bringing together commercial tenants and

landlords. This results in lost jobs, tax revenues and community stability. It is the intent of the City Council to give small businesses a measure of predictability through a two-step procedure of mediation and, if necessary, arbitration for negotiating lease renewals and rentals. The purpose of this legislation is, therefore, to create a fair negotiating environment, which will result in reasonable lease terms to help small business investment to encourage job retention and growth in the City of New York.

§2. Title twenty-six of the administrative code of the city of New York is amended by adding a new chapter nine to follow chapter eight to read as follows:

## CHAPTER 9

### COMMERCIAL PREMISES LEASE RENEWALS AND ARBITRATION PLAN

§26-801 Scope. This chapter shall apply to all lease renewals for manufacturing space, theatre and performing arts space premises, premises leased by not-for-profit organizations and to all lease renewals for other commercial space for premises having an area of 3,000 square feet or less, except for those leases entered into by the parties in a franchise relationship as defined and regulated by the federal petroleum marketing practices act and except for any license agreement or other agreement, which is not a lease, permitting a retail licensee or a retail franchise to conduct a retail business on or in part of the commercial space wherein the retail licensor or retail franchiser conducts a retail business and except for newly constructed buildings for which a building permit was issued on or after the effective date of this law. Except for lease renewals for space leased by a not-for-profit organization, the provisions of this chapter shall not apply to commercial space above the second floor. Any provision wherein the landlord and tenant are required to arbitrate differences shall apply to leases wherein the landlord refuses to offer any rent price or the rent price demanded by the landlord exceeds ten percent of the average rent charged during the final twelve months of the existing lease for the first year of the new lease or forty percent of the average rent charged during the final twelve months of the existing lease for the tenth year of the new lease or exceeds a yearly increase of six percent for any year after the first year of

the lease. The provisions of this chapter shall apply to any landlord and tenant whose lease expired on or after May thirtieth, two thousand one and any action required to be taken pursuant to the terms of this chapter one year prior to the expiration of a lease shall be taken within sixty days after the effective date of this chapter and any action required to be taken one hundred eighty days prior to the expiration of such lease shall be taken within two hundred forty-five days from such effective date.

§26-802 Definitions. a. "Arbitrator" shall mean the person chosen by the parties or by the american arbitration association, or any other recognized arbitration organization, to resolve a dispute between a landlord and tenant concerning a lease renewal or the rent to be charged for the commercial premises.

b. "Commercial premises" shall mean premises occupied for non-residential purposes including, but not limited to, retail stores, professional services, offices, manufacturing, assembling, processing, cultural and not-for-profit uses.

c. "Landlord" shall mean any owner, lessor, sublessor or other person entitled to receive rent for the use or occupancy of any commercial premises, or an agent thereof.

d. "Mediator" shall mean any person, agreed upon by the parties to the dispute or chosen by the american arbitration association or any other recognized mediation or arbitration association, to act as an intermediary between the parties. The mediator shall not offer a binding decision concerning the matter in dispute.

e. "Negotiation" shall mean the process of conferring with one another through conferences, discussions and compromise, to arrive at a mutually agreeable terms.

f. "Rent" shall mean any consideration, including any deposit, pass-along, bonus or gratuity demanded or received in connection with the use or occupancy of any commercial premises.

g. "Services" shall mean those facilities which enhance the use of the commercial premises, including, but not limited to, repairs, maintenance, painting, heat, hot and cold water, utilities, elevator service, security devices and patrols, furnishings, storage, janitorial and landscaping services, refuse removal, insurance

protection, parking spaces, and services to, and facilities in common areas of the building or parcel in which the rental unit is located.

h. "Space" shall mean the physical area of the commercial premises.

i. "Tenant" shall mean tenant, subtenant, lessee, sublessee, or any other persons lawfully entitled to use or occupancy of any commercial premises.

§26-803 Manner of Service. All papers which, by the terms of this chapter are required to be served, shall be served by a process server, or shall be sent by first class mail and certified mail, return receipt requested. All notices which required to be given in accordance with the provisions of this chapter, shall be mailed by first class mail and by certified mail, return receipt requested.

§26-804 Rental Guidelines. a. Qualified Right of Renewal. (1) All leases of commercial space may be renewed at the option of the tenant. Such lease renewals shall be for a minimum term of ten years, provided however, that at the tenant's option, and with written approval of the landlord, a lease of shorter or longer duration may be selected. (2) No period of lease renewal period required by this chapter shall extend beyond the landlord's lawful ability to rent the premises to the tenant, where such ability is limited by (i) the expiration of a lease which is not renewed in which, with respect to a third party, the landlord is a tenant, (ii) the obligation to rent the premises to a third party pursuant to a bona fide lease entered into prior to the effective date of this chapter, (iii) the exercise by a third party of a bona fide option to rent the premises provided that such option was executed prior to the effective date of this chapter, or (iv) any other lawful reason arising prior to such effective date. Any landlord whose obligations under this chapter are limited by the provisions of this section shall not be required to negotiate or to arbitrate as otherwise provided for in this chapter but shall remain obligated to negotiate and to arbitrate a renewal lease for such period of time for which the landlord has a lawful ability to rent the premises to the tenant. The landlord shall provide notice to the tenant one year before the termination of the lease of the basis on which the lease cannot be extended for a full ten year term. (3) A tenant shall lose the right of renewal and a landlord may refuse to renew a lease only on the following

grounds:

(a) The tenant has persistently delayed rent payments without cause. "Cause", for the purpose of this section, is defined as the withholding or rental payments by the tenant due to alleged violations of the rental agreement by the landlord. In order for the landlord to be excused the obligation to renew a lease on this basis, the landlord must have served the tenant at least three prior notices during the term of the lease to the tenant for demand of payment within thirty days, and then prove that the lessee has not paid within the thirty day period.

The landlord shall not serve such notice unless the rent payment was in arrears for a minimum of fifteen days;

(b) The tenant uses the premises for in a manner different from that described in the lease;

(c) The tenant conducts any form of illegal activity on the premises;

(d) The tenant has breached any substantive obligation under the current lease and has failed to cure such breach within the time provided for in the lease or, if the lease has no cure provision, within thirty days following written notice by the landlord;

(e) Upon the termination of the current tenancy, the landlord intends to demolish or substantially reconstruct the premises or a substantial part thereof, or to carry out substantial work or construction on the premises or part thereof which he or she could not reasonably do without obtaining possession of the premise. The landlord shall notify the tenant of his decision to take possession of the premises at least one year prior to the termination of the lease. In the event that the landlord fraudulently invokes this justification for a refusal to renew a commercial lease, the defrauded tenant may collect treble damages for any loss suffered as a result of such action;

(f) The current tenancy was created by the subletting of the property, the prime tenant did not notify the landlord by certified mail of the subtenant's existence and did not obtain the consent of the landlord. This ground is void if the landlord and tenant had agreed in the lease to allow subleasing rights and all obligations of the prime tenant on the issue, were complied with;

(g) It has been determined by the appropriate body that the tenant is a gross and persistent violator

of the New York City tax code or of any license obligations related to the use of the premises;

(h) On the termination of the current tenancy, the landlord intends to occupy the retail premises in order to carry out its own business. The landlord shall notify the tenant of his decision to reoccupy the premises at least one year prior to the termination of the lease. In the event that the landlord fraudulently invokes this justification for a refusal to renew a commercial lease, the defrauded tenant may collect treble damages for any loss suffered as a result of such action.

b. Procedure for refusal to renew. (1) The landlord is to notify the tenant a minimum of one year before the expiration of lease, that the landlord is not going to renew the lease and to state the reason or reasons for such denial in detail. Failure of the landlord to give such notice shall subject the parties to the provisions of subdivision c of this section. The landlord is to furnish the tenant with all pertinent data supporting such reason or reasons. If the tenant still wishes to challenge the refusal to renew the lease and apply for a renewal of the lease, then the tenant must notify the landlord within thirty days after the receipt of the landlord's notice of his intent to challenge the refusal and seek arbitration on the issue of renewal. The tenant shall then notify the american arbitration association or any other recognized arbitration organization within fourteen days after notification by the tenant to the landlord that a hearing is requested to determine whether the landlord's grounds for refusal are valid.

(2) The landlord and tenant shall choose the arbitrator from a list of arbitrators by the american arbitration association or other recognized arbitration association or, if they cannot agree on the selection of the arbitrator within ten days of the tenant's notification to such arbitration association that a hearing is requested, the tenant shall notify such organization within five days of the parties' failure to make a selection and within five days of receipt of such notice from the tenant such arbitration organization shall select the arbitrator.

(3) The arbitrator shall notify both parties within thirty days of receipt by the arbitration association of the request by the tenant for a hearing, of the date, place, time and rules of the hearing. The landlord and the tenant are to furnish the arbitrator with all relevant documentation as determined by the arbitrator. The hearing

shall take place in the borough where the commercial premises are located unless otherwise agreed to by the landlord and tenant. The arbitrator shall conduct a preliminary meeting prior to the hearing to review the documentation and familiarize himself or herself with the case. The matters the arbitrator shall determine during the preliminary meeting shall include, but not be limited to, the need to inspect the space and the need to hire expert consultants to certify the accuracy of the documentation. The arbitrator has the right to conduct an inspection of the space after notifying both parties at least three days in advance of the inspection and informing them of their right to be present during the inspection.

(4) The hearing before the arbitrator shall be tape recorded. The tape recording shall be transcribed upon the request of any party who posts in advance the estimated cost of the transcription. Either party may provide, at its expense, a reporter to transcribe the hearing. The official record of the hearing shall include all documents and offers of proof presented to the arbitrator, the written decision of the arbitrator and the transcript of the hearing. The landlord and tenant will each be given no more than one day to present their case or such additional time as is determined by the arbitrator. They shall be allowed to present testimony, witnesses, pictures, videos, documents, including charts, and any other relevant data. Each party shall be allowed to confront and cross-examine adverse witnesses. The arbitrator can choose to investigate any aspect of the case to help arrive at a decision.

(5) The arbitrator shall render a written determination stating the basis for such determination and notifying the parties of such determination no later than thirty days after the hearing has been concluded. Failure to render a timely, written determination and to notify parties within thirty days shall not affect the enforceability of such determination. Such determination shall be based on (i) appropriate laws applicable to commercial spaces; (ii) the terms of the lease and compliance therewith; and (iii) any other relevant and material factors that the arbitrator shall deem proper. If the arbitrator decides in favor of the landlord, then the tenant shall have until the end of the current lease to vacate. If the arbitrator decides in favor of the tenant, then the landlord is to notify the tenant at least one hundred eighty days before the expiration of the lease that the

landlord is ready to meet with the tenant to renegotiate the lease consistent with the arbitrators written determination. If the parties cannot agree on the rent to be charged for the commercial premises, they shall submit to the requirements of subdivision c of this section. The costs of arbitration shall be borne equally by the landlord and tenant.

c. Procedure for unopposed lease renewals. (1) The landlord shall notify the tenant at least one hundred eighty days prior to the expiration of the lease of his willingness to renegotiate the lease agreement. If the landlord and tenant agree, they may at any time negotiate a lease renewal, with any agreed to terms and conditions, not inconsistent with the provisions of this chapter. The tenant is to continue rent payments set forth in the lease until the parties reach an agreement on a lease renewal. The first ninety days of the one hundred eighty day notice period is for the purpose of negotiations. Alternatively, either party may compel the other party to the dispute to use that ninety day period, or any part thereof, for the purposes of mediation. If either the landlord or tenant chooses mediation, he or she shall notify the other party that a mediation session is requested. The parties shall choose a mediator who is agreeable to both the landlord and tenant, or if no such person is agreeable, then the american arbitration association or another recognized arbitration or mediation association shall appoint a mediator. The mediator shall notify the landlord and tenant, no more than ten days after his or her appointment, of the date, time, place and rules of the hearing. The mediator shall follow his or her customary rules and may render an opinion concerning the dispute, which shall not be binding on the parties. If after ninety days of negotiation and any mediation sessions, the landlord and tenant do not reach an agreement on a new lease, and the rent demanded by the landlord exceeds ten percent of the average rent charged during the final twelve months of the existing lease for the first year of the new lease or forty percent of the average rent charged during the final twelve months of the existing lease for the tenth year of the new lease or exceeds a yearly maximum increase of six percent for any year after the first year of the new lease, then the tenant is to notify the american arbitration association or any other recognized arbitration organization, within fourteen days of the expiration of the first ninety day period, that a hearing is requested.



(2) The landlord and tenant shall choose the arbitrator from a list of arbitrators provided by the american arbitration association or other recognized arbitration association. If they cannot agree on the selection of the arbitrator within ten days of the tenant's notice to such association that a hearing is requested, the tenant shall notify within five days such organization of the parties' failure to make a selection and such arbitration organization shall determine the arbitrator within five days of receipt of such notice from the tenant.

(3) The arbitrator shall notify both parties of the date, place, time and rules of the hearing within thirty days of receipt by the arbitration association of the request for a hearing. The hearing shall take place in the borough where the commercial premises are located unless otherwise agreed to by the landlord and tenant. The landlord and tenant shall furnish the arbitrator with all relevant documentation, and the arbitrator shall conduct a preliminary meeting prior to the hearing to review the data and familiarize himself or herself with the case. The matters the arbitrator shall determine during the preliminary meeting shall include, but not be limited to, the need to inspect the space and the need to hire expert consultants to certify the accuracy of data. The arbitrator has the right to conduct an inspection of the space after notifying both parties at least three days in advance of the inspection and informing them of their right to be present during the inspection.

(4) The hearing before the arbitrator shall be tape recorded. The tape recording shall be transcribed upon the request of any party who posts in advance the estimated cost of the transcription. Either party may provide, at their expense, a reporter to transcribe the hearing. The official record of the hearing shall include all documents and offers of proof presented to the arbitrator, the written decision of the arbitrator and any transcript of the hearing. The landlord and tenant will each be given no more than one day to present testimony, witnesses, pictures, videos, documents, including charts, comparable rent data and any other relevant data. Each party shall be allowed to confront and cross-examine adverse witnesses. The arbitrator can choose to investigate any aspect of the case to help arrive at a decision.

(5) The arbitrator shall render a written determination as to the rent to be paid during a renewal period of ten years, together with the basis for the determination of the rent, and shall notify the parties of such

determination no later than thirty days after the hearing has been concluded. Failure to notify parties within thirty days shall not affect the enforceability of such determination. Such determination shall be based on (i) the cost of maintenance and operation of the entire property including land and building improvements, excluding all service debt such as mortgages, (ii) the amount paid directly by the owner of rates assessed against the building, (iii) the kind, quality and quantity of services furnished by the landlord, (iv) the condition of the space including capital improvements made by the tenant, (v) current interest rates on bank deposits and United States government bonds, (vi) the current inflation rate and the individual components of the inflation index, (vii) the lease history and any relevant sublease history, (viii) the longevity of the business, (ix) the location of the business, (x) the extent to which the business is bound to its particular location, (xi) the size of the space and (xii) a reasonable return on capital invested in the purchase of the property and in any improvements made thereto, excluding interest paid or accrued. Where the commercial premises is located in a mixed-use building with less than twenty-five residential units, the arbitrator shall give special consideration to the criteria listed in paragraphs (i) and (ii) of this section. Within thirty days of the hearing, the arbitrator shall send the decision as to the rent price to the parties involved by certified mail.

(6) The arbitrator's decision as to the rent shall be final and binding on both parties except as provided herein, and they shall enter into a lease incorporating such rent which lease does not diminish any services provided by the landlord pursuant to the existing lease. Such renewal lease shall be entered into by the termination date of the current lease and shall commence at the time of expiration of the existing lease. If, however, the tenant elects not to pay the rent set by the arbitrator, then the landlord and tenant shall not enter into a new lease agreement or renew the existing lease.

(7) The tenant will be allowed to remain in possession at a rent no greater than one hundred twenty five percent of the average rent charged during the final twelve months of the last rental agreement between the landlord and tenant from the termination date of the existing lease until such date on which the tenant shall remove his or her property from the premises as provided herein. In the event the landlord receives a written

bona fide offer from a prospective tenant to rent the premises, the landlord must first offer the current tenant the option of entering into a lease at the rent and other terms agreed to by the prospective tenant to the landlord. The landlord is to notify the tenant of such offer within three days of receipt of such written offer. If the tenant declines to pay the rent or fails to accept the offer within fourteen days of receipt of the landlord's offer, then the tenant has thirty days, from the date such notice is received, to remove property from the commercial premises provided that the lease has expired. If the tenant declines the option of first refusal, the landlord and tenant may at any time enter into a lease for a term of less than or more than seven years and for an amount different from that set by the arbitrator. The cost of arbitration shall be borne equally by landlord and tenant.

§26-805 Security deposits. Security deposits shall not exceed an amount equal to two months rent. All security deposits shall be placed in escrow in an interest-bearing account at a federally insured bank located in New York state. The tenant shall be notified in writing of the location of such escrow account. Interest paid on the account shall be paid to the tenant annually. The amount of interest paid to the tenant shall equal the interest paid by the federally insured bank less one percent for the landlord's administrative costs.

§26-806 Pass-alongs. No lease or lease renewal for a commercial premises entered into pursuant to the provisions of this section shall contain a provision for rent increases above the base rent determined by arbitration or agreed upon, with the exception of increased costs resulting from increased real property taxes. Any rent increases to pass along the cost of increased real property taxes shall be apportioned among the commercial tenants strictly according to the percentage of square feet in the building occupied by each tenant.

§26-807 Retaliation. No landlord shall in any way retaliate against any tenant for the tenant's assertion or exercise of any rights under this chapter. Such retaliation may subject the landlord to a suit for actual and punitive damages, injunctive relief, and attorney's fees. Proof of retaliation by the landlord occurring prior to or during the arbitration proceeding shall be considered by the arbitrator in making a determination as to the rent to be paid.

§26-808 Waiver. No provision in any lease, rental agreement, or agreement made in connection

therewith which waives or diminishes any right of tenant under this chapter is valid.

§26-809 Evaluation. At the end of each year, any arbitration organization whose members are selected to make any determination pursuant to this chapter shall report to the council on the effectiveness of this chapter in carrying out the purposes set forth in the legislative findings. The report should include recommendations with respect to the criteria that triggers mediation or arbitration. Any such recommendations should take into account the existing rental market which includes among other factors the inflation and interest rates. This report shall also identify any other positive or negative effects of the law.

§26-810 Violations. The tenant is to immediately notify the landlord of any violations of any law, regulation, rule, code or other regulatory standard for the leased premises. The landlord is to immediately notify all tenants of any and all such violations issued with respect to the building in which the premises are located.

§26-811 Penalties. a. A landlord or tenant may seek injunctive relief mandating arbitration and/or appropriate damages against any landlord or tenant who fails to submit voluntarily to arbitration or otherwise fails to act in good faith.

b. Any and all legal expenses incurred by one party as a result of its attempt to compel the other party to comply with the provisions of this chapter may be awarded by the arbitrator or a court of competent jurisdiction, to the appropriate party.

§26-812. Inconsistency with other laws. In the event of any inconsistency with any other laws of the city of New York, this law shall take precedence.

§3. This local law shall take effect immediately.

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