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Int. No. 2299

By Council Members Rosenthal, Levin, Gibson, Louis, Cumbo, Menchaca, Dromm, Chin, Ayala, Adams, Brooks-Powers, Rose, Koslowitz, Brannan, Riley, Kallos, Dinowitz and the Public Advocate (Mr. Williams) (by request of the Manhattan Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to lease agreements concerning storefront premises

Be it enacted by the Council as follows:

Section 1. This local law shall be known and may be cited as the “Storefront Business Bill of Rights”.

§ 2. Chapter 10 of title 22 of the administrative code of the city of New York is amended by adding a new section 22-1007 to read as follows:

§ 22-1007 Lease requirements for storefront premises.

a. Definitions. As used in this section, the following terms have the following meanings:

Best efforts. The term “best efforts” means reasonable efforts.

Ground floor. The term "ground floor" means the ground floor of a building, directly accessible to the public from the street or from the interior of a building.

Ground floor commercial premises. The term "ground floor commercial premises" means any ground floor premises that is occupied or used, or could be occupied or used, for the purpose of offering or selling goods at retail.

Owner. The term "owner" means an owner, lessor, sublessor, assignee or other person receiving or entitled to receive rent for the use or occupancy of storefront premises or an agent of an owner, lessor, sublessor, assignee or other person receiving or entitled to receive rent for the use or occupancy of storefront premises.

Rent. The term "rent" means any and all consideration received by an owner in connection with the use or occupancy of storefront premises.

Second floor. The term "second floor" means the second floor of a building, visible from the street, and accessible to the public directly from the street or from the interior of a building.

Second floor commercial premises. The term "second floor commercial premises" means any second floor premises that is occupied or used, or could be occupied or used, for the purpose of offering of selling goods at retail.

Storefront premises. The term "storefront premises" means any ground floor commercial premises or second floor commercial premises in the city of New York.

b. Information required to be provided. An owner may not accept an initial rent payment for storefront premises from a tenant unless the owner provides the tenant with the following information:

1. A copy of the certificate of occupancy that covers the storefront premises;

2. An itemized list in writing of the average cost of utilities, insurance, real property taxes, commercial rent taxes, business improvement district assessments, and any other fees or assessments associated with the storefront premises for the preceding 2 years, and a description of the kind of business for which the storefront

premises was used during such two-year period, to the extent such information is available to the owner;

3. An itemized list in writing of the reasonably expected average cost of utilities, insurance, real property taxes, commercial rent taxes, business improvement district assessments, and any other fees or assessments associated with the storefront premises for the two-year period following the date on which the tenant is expected to begin occupancy of the storefront premises; and

4. A detailed written history of any known legal or regulatory violations pertaining to the storefront premises issued during the preceding 10 years and any known construction pertaining to the storefront premises during the preceding 10 years, including, but not limited to, any information available on the city open data web portal regarding such violations or construction.

c. Requirement to update contact information. In any case in which an owner leases a storefront premises to a tenant, during the duration of the term of the lease the owner and tenant shall provide one another with current contact information, including address, telephone number and e-mail address, and provide one another with timely notice of updates to such information, if applicable.

d. Time to cure violations. In any case in which an owner leases a storefront premises to a tenant, during the duration of the term of the lease the owner shall provide the tenant with reasonable time to cure lease violations within all applicable requirements under city and state law.

e. Written lease required. No owner may lease storefront premises to a tenant for a term of more than 1 year unless the lease is in writing and includes, but is not limited to, provisions setting forth the following requirements:

1. If the owner and tenant have not come to an agreement regarding a lease renewal by 120 days before the expiration date of the lease, the owner shall provide the tenant with either a lease renewal offer or notification of an intent not to offer a lease renewal. The tenant is not required to notify the owner of an intention with respect to a lease renewal before receiving such offer or notification, nor in any case is the tenant required to notify the owner of an intention with respect to a lease renewal earlier than 120 days before the

expiration date of the lease;

2. Within 30 days of receipt by the tenant of a lease renewal offer from the owner no earlier than 150 days before the expiration of the original lease, the tenant shall respond to the owner with an acceptance, counteroffer or rejection;

3. All notifications and responses in the lease renewal negotiation process shall be made in writing by mail, e-mail or text message;

4. Within 30 days of the tenant receiving, no earlier than 150 days before the expiration of the original lease, notification from the owner of an intent not to offer a lease renewal, the tenant shall either:

(a) make an offer for lease renewal to the owner; or

(b) notify the owner that the tenant will not make such an offer and will either (i) vacate the premises in accordance with the existing lease provisions or (ii) exercise an option to extend the lease by a period of time as described in paragraph 6 of this subdivision, if such option is available to the tenant pursuant to the provisions of such paragraph 6;

5. If the tenant makes an offer for lease renewal as described in subparagraph (a) of paragraph 4 of this subdivision or counteroffer as described in paragraph 2 of this subdivision, the owner shall either accept the offer or counteroffer or make best efforts to agree on lease renewal terms, and the tenant shall also make best efforts to agree on lease renewal terms;

6. If, by 30 days before the original date of the expiration of the lease, the owner and tenant have not come to agreement on lease renewal terms, the tenant has a one-time option to extend the original lease then in effect by not more than 1 year, so long as (i) the tenant has made timely rental payments to the owner, (ii) the tenant has not materially breached the lease, (iii) the tenant has not previously notified the owner that the tenant will vacate the storefront premises at the expiration of the original lease, (iv) the tenant notifies the landlord of the intent to extend the original lease by not later than 20 days before the expiration of the original lease, and (v) the owner has not previously notified the tenant that the owner has obtained another tenant to lease the

storefront premises after such expiration of the original lease, in which case the existing tenant may extend the lease for a period of up to 90 days, subject to all other requirements described in this paragraph; and

7. The monthly rent increase for the period of a lease extension option pursuant to paragraph 6 of this subdivision shall be:

(a) 10 percent of the average monthly rent payment owed by the tenant for the last year of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal earlier than 120 days before the expiration date of the lease;

(b) 9 percent of the average monthly rent payment owed by the tenant for the last year of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 120 days and 91 days, inclusive, before the expiration date of the lease;

(c) 8 percent of the average monthly rent payment owed by the tenant for the last year of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 90 days and 61 days, inclusive, before the expiration date of the lease; and

(d) 7 percent of the average monthly rent payment owed by the tenant for the last year of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 60 days and 31 days, inclusive, before the expiration date of the lease or if no offer of lease renewal or notification of intent not to offer a lease renewal has been provided by the owner.

f. Lease renewal for leases between 6 months and 1 year. In any case in which an owner leases a storefront premises to a tenant for a term between 6 months and 1 year, inclusive, the following procedures regarding lease renewal shall apply:

1. If the owner and tenant have not come to an agreement regarding a lease renewal by 120 days before the expiration date of the lease, the owner shall provide the tenant with either a lease renewal offer or notification of an intent not to offer a lease renewal. The tenant is not required to notify the owner of an intention with respect to a lease renewal before receiving such offer or notification, nor in any case is the tenant

required to notify the owner of an intention with respect to a lease renewal earlier than 120 days before the expiration date of the lease;

2. Within 30 days of receipt by the tenant of a lease renewal offer from the owner no earlier than 150 days before the expiration of the original lease, the tenant shall respond to the owner with an acceptance, counteroffer or rejection;

3. All notifications and responses in the lease renewal negotiation process shall be made in writing by mail, e-mail or text message;

4. Within 30 days of the tenant receiving, no earlier than 150 days before the expiration of the original lease, notification from the owner of an intent not to offer a lease renewal, the tenant shall either:

(a) make an offer for lease renewal to the owner; or

(b) notify the owner that the tenant will not make such an offer and (i) will vacate the premises in accordance with the existing lease provisions, or (ii) will exercise an option to extend the lease if a lease provides such an option and the tenant meets the requirements under the lease to exercise such option; and

5. If the tenant makes an offer for lease renewal as described in subparagraph (a) of paragraph 4 of this subdivision or counteroffer as described in paragraph 2 of this subdivision, the owner shall either accept the offer or counteroffer or make best efforts to agree on lease renewal terms, and the tenant shall also make best efforts to agree on lease renewal terms.

g. Extension option for written leases between 6 months and 1 year. 1. In any case in which an owner provides a written lease for a storefront premises to a tenant for a term between 6 months and 1 year, inclusive, such lease shall provide that if, by 30 days before the original date of the expiration of the lease, the owner and tenant have not come to agreement on lease renewal terms, the tenant has a one-time option to extend the original lease then in effect by not more than 6 months, so long as (i) the tenant has made timely rental payments to the owner, (ii) the tenant has not materially breached the lease, (iii) the tenant has not previously notified the owner that the tenant will vacate the storefront premises at the expiration of the original lease, (iv)

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the tenant notifies the landlord of the intent to extend the original lease by not later than 20 days before the expiration of the original lease, and (v) the owner has not previously notified the tenant that the owner has obtained another tenant to lease the storefront premises after such expiration of the original lease, in which case the existing tenant may extend the lease for a period of up to 90 days, subject to all other requirements described in this paragraph.

2. The monthly rent increase for the period of a lease extension option pursuant to paragraph 1 of this subdivision shall be:

(a) 10 percent of the average monthly rent payment owed by the tenant for the last six months of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal earlier than 120 days before the expiration date of the lease;

(b) 9 percent of the average monthly rent payment owed by the tenant for the last six months of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 120 days and 91 days, inclusive, before the expiration date of the lease;

(c) 8 percent of the average monthly rent payment owed by the tenant for the last six months of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 90 days and 61 days, inclusive, before the expiration date of the lease; and

(d) 7 percent of the average monthly rent payment owed by the tenant for the last six months of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 60 days and 31 days, inclusive, before the expiration date of the lease or if no offer of lease renewal or notification of intent not to offer a lease renewal has been provided by the owner.

h. Lease renewal for leases between 3 and 6 months. In any case in which an owner leases a storefront premises to a tenant for a term of at least 3 months but less than 6 months, the following procedures regarding lease renewal shall apply:

1. If the owner and tenant have not come to an agreement regarding a lease renewal by 60 days before

the expiration date of the lease, the owner shall provide the tenant with either a lease renewal offer or notification of an intent not to offer a lease renewal. The tenant is not required to notify the owner of an intention with respect to a lease renewal before receiving such offer or notification, nor in any case is the tenant required to notify the owner of an intention with respect to a lease renewal earlier than 60 days before the expiration date of the lease;

2. Within 15 days of receipt by the tenant of a lease renewal offer from the owner no earlier than 75 days before the expiration of the original lease, the tenant shall respond to the owner with an acceptance, counteroffer or rejection;

3. All notifications and responses in the lease renewal negotiation process shall be made in writing by mail, e-mail or text message;

4. Within 15 days of the tenant receiving, no earlier than 75 days before the expiration of the original lease, notification from the owner of an intent not to offer a lease renewal, the tenant shall either:

(a) make an offer for lease renewal to the owner; or

(b) notify the owner that the tenant will not make such an offer and (i) will vacate the premises in accordance with the existing lease provisions, or (ii) will exercise an option to extend the lease if the lease provides such an option and the tenant meets the requirements under the lease to exercise such option; and

5. If the tenant makes an offer for lease renewal as described in subparagraph (a) of paragraph 4 of this subdivision or counteroffer as described in paragraph 2 of this subdivision, the owner shall either accept the offer or counteroffer or make best efforts to agree on lease renewal terms, and the tenant shall also make best efforts to agree on lease renewal terms.

i. Extension option for written leases between 3 and 6 months. 1. In any case in which an owner provides a written lease for a storefront premises to a tenant for a term of at least 3 months but less than 6 months, such lease shall provide that if, by 30 days before the original date of the expiration of the lease, the owner and tenant have not come to agreement on lease renewal terms, the tenant has a one-time option to

extend the original lease then in effect by not more than 60 days, so long as (i) the tenant has made timely rental payments to the owner, (ii) the tenant has not materially breached the lease, (iii) the tenant has not previously notified the owner that the tenant will vacate the storefront premises at the expiration of the original lease, and (iv) the tenant notifies the landlord of the intent to extend the original lease by not later than 20 days before the expiration of the original lease; and

2. The monthly rent increase for the period of a lease extension option pursuant to paragraph 1 of this subdivision shall be:

(a) 10 percent of the average monthly rent payment owed by the tenant for the last 3 months of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal earlier than 60 days before the expiration date of the lease;

(b) 9 percent of the average monthly rent payment owed by the tenant for the last 3 months of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 60 days and 51 days, inclusive, before the expiration date of the lease;

(c) 8 percent of the average monthly rent payment owed by the tenant for the last 3 months of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 50 days and 41 days, inclusive, before the expiration date of the lease; and

(d) 7 percent of the average monthly rent payment owed by the tenant for the last 3 months of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 40 days and 31 days, inclusive, before the expiration date of the lease or if no offer of lease renewal or notification of intent not to offer a lease renewal has been provided by the owner.

j. Lease renewal for leases between 1 and 3 months. In any case in which an owner leases a storefront premises to a tenant for a term of more than 1 month but less than 3 months, the following procedures regarding lease renewal shall apply:

1. If the owner and tenant have not come to an agreement regarding a lease renewal by 20 days before

the expiration date of the lease, the owner shall provide the tenant with either a lease renewal offer or notification of an intent not to offer a lease renewal. The tenant is not required to notify the owner of an intention with respect to a lease renewal before receiving such offer or notification, nor in any case is the tenant required to notify the owner of an intention with respect to a lease renewal earlier than 20 days before the expiration date of the lease;

2. Within 5 days of receipt by the tenant of a lease renewal offer from the owner no earlier than 25 days before the expiration of the original lease, the tenant shall respond to the owner with an acceptance, counteroffer or rejection;

3. All notifications and responses in the lease renewal negotiation process shall be made in writing by mail, e-mail or text message;

4. Within 5 days of the tenant receiving, no earlier than 25 days before the expiration of the original lease, notification from the owner of an intent not to offer a lease renewal, the tenant shall either:

(a) make an offer for lease renewal to the owner; or

(b) notify the owner that the tenant will not make such an offer and (i) will vacate the premises in accordance with the existing lease provisions, or (ii) will exercise an option to extend the lease if the lease provides such an option and the tenant meets the requirements under the lease to exercise such option; and

5. If the tenant makes an offer for lease renewal as described in subparagraph (a) of paragraph 4 of this subdivision or counteroffer as described in paragraph 2 of this subdivision, the owner shall either accept the offer or counteroffer or make best efforts to agree on lease renewal terms, and the tenant shall also make best efforts to agree on lease renewal terms.

k. Extension option for written leases between 1 and 3 months. 1. In any case in which an owner provides a written lease for a storefront premises to a tenant for a term of more than 1 month but less than 3 months, such lease shall provide that if, by 10 days before the original date of the expiration of the lease, the owner and tenant have not come to agreement on lease renewal terms, the tenant has a one-time option to

extend the original lease then in effect by not more than 30 days, so long as (i) the tenant has made timely rental payments to the owner, (ii) the tenant has not materially breached the lease, (iii) the tenant has not previously notified the owner that the tenant will vacate the storefront premises at the expiration of the original lease, (iv) the tenant notifies the landlord of the intent to extend the original lease by not later than 10 days before the expiration of the original lease; and

2. The monthly rent increase for the period of a lease extension option pursuant to paragraph 1 of this subdivision shall be:

(a) 10 percent of the monthly rent payment owed by the tenant for the last month of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal earlier than 20 days before the expiration date of the lease;

(b) 9 percent of the monthly rent payment owed by the tenant for the last month of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 20 days and 17 days, inclusive, before the expiration date of the lease;

(c) 8 percent of the monthly rent payment owed by the tenant for the last month of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 16 days and 14 days, inclusive, before the expiration date of the lease; and

(d) 7 percent of the monthly rent payment owed by the tenant for the last month of the lease, if the owner has provided the tenant with a lease renewal offer or notification of intent not to offer a lease renewal between 13 days and 11 days, inclusive, before the expiration date of the lease or if no offer of lease renewal or notification of intent not to offer a lease renewal has been provided by the owner.

l. Right of action. 1. A tenant may bring an action in any court of competent jurisdiction for a claim of noncompliance with the provisions of this section. If a court of competent jurisdiction finds that an owner has failed to comply with this section in relation to a tenant, the court:

(a) May impose a civil penalty in an amount not to exceed 3 percent of the assessed value of the

property in which the storefront premises is located, as such assessed value is determined for the current fiscal year in accordance with section 1506 of the charter;

(b) May issue an order directing the owner to ensure that no further violation occurs; and

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

2. This subdivision does not limit or abrogate any claim or cause of action a person has under common law or by statute. The provisions of this subdivision are in addition to any such common law and statutory remedies.

3. No provision in this section shall be construed as creating any private right of action on the part of any person or entity against the city or any agency, official or employee thereof.

m. Applicability. This section shall apply with respect to any lease entered into after the effective date of the local law that added this section.

n. Administration. The commissioner shall administer the provisions of this section and shall consult with other agencies as appropriate in administering such provisions.

§ 3. Subdivision a of section 22-1002 of the administrative code of the city of New York, as amended by local law number 155 for the year 2019, is amended to read as follows:

a. The commissioner shall post on the city's website online business tools and resources, including but not limited to:

1. Tools provided by the department, which may include accounting, recordkeeping and bookkeeping resources;

2. A searchable and interactive guide to aid current or prospective business owners in understanding city laws and rules applicable to such business, including the applicable licenses, permits, and certifications the owner must obtain. Such guide shall encompass provisions in the administrative code and the rules of the city of New York, including licensing, permitting, and operational requirements, that are applicable to the particular

type of business. The guide shall include zoning information and a brief description of applicable regulations and requirements, written in plain language that is likely to be understood by business owners; [and]

3. A model commercial lease, with optional clauses, for different term lengths, including 6-month, one-year, two-year, three-year, five-year, and ten-year leases, and a translation of such leases into the designated citywide languages described in section 23-1101. Such model commercial leases shall be specifically designed for storefront premises, as defined in section 22-1007, and shall include, but not be limited to, the applicable requirements described in subdivisions b through k of such section; and

4. Such other tools and resources as the commissioner may deem appropriate.

§ 4. No provision enacted in this local law shall be construed as creating a private right of action on the part of any person or entity against the city or any agency, official or employee thereof.

§ 5. This local law takes effect 120 days after it becomes law, except that the commissioner of small business services shall take such measures as are necessary for the implementation of this local law before such date.

JB
LS #16370
4/20/21