



Legislation Text

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Int. No. 1408

By Council Members Espinal, Cumbo, Chin, Rosenthal, Rivera and Kallos

A Local Law to amend the administrative code of the city of New York, in relation to establishing an affordable retail space requirement at city financially assisted development projects

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 6 the administrative code of the city of New York is amended by adding a new section 6-143 to read as follows:

§ 6-143 Affordable retail space at city development projects. a. Definitions. For purposes of this section, the following terms have the following meanings:

Affordable retail space. The term “affordable retail space” means, in relation to a city development project, a percentage or amount of ground floor retail space that is leased or rented at a below market lease rate.

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

City development project. The term “city development project” means a project undertaken by a city agency or a city economic development entity for the purpose of improvement or development of real property, economic development, job retention or growth, or other similar purposes where the project has received or is expected to receive financial assistance.

City economic development entity. The term “city economic development entity” means a not-for-profit organization, public benefit corporation or other entity that provides or administers economic development benefits on behalf of the city pursuant to paragraph b of subdivision 1 of section 1301 of the charter.

Commissioner. The term “commissioner” means the commissioner of small business services.

Covered developer. The term “covered developer” means any person receiving financial assistance in relation to a city development project, or any assignee or successor in interest of real property that qualifies as a city development project.

Department. The term “department” means the department of small business services.

Financial assistance. The term “financial assistance” means assistance that is provided to a covered developer for the improvement or development of real property, economic development, job retention and growth, or other similar purposes, and that is provided either (i) directly by the city, or (ii) indirectly by a city economic development entity and that is paid in whole or in part by the city, and that at the time the covered developer enters into a written agreement with the city or city economic development entity is expected to have a total present financial value of \$1,000,000 or more. Financial assistance includes, but is not limited to, cash

payments or grants, bond financing, tax abatements or exemptions (including, but not limited to, abatements or exemptions from real property, mortgage recording, sales and uses taxes, or the difference between any payments in lieu of taxes and the amount of real property or other taxes that would have been due if the property were not exempted from the payment of such taxes), tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of building, land or leases, or the cost of capital improvements related to real property that, under ordinary circumstances, the city would not pay for; provided, however, that any tax abatement, credit, reduction or exemption that is given to all persons who meet criteria set forth in the state or local legislation authorizing such tax abatement, credit, reduction or exemption is deemed to be as of right (or non-discretionary); and provided further that the fact that any such tax abatement, credit, reduction or exemption is limited solely by the availability of funds to applicants on a first come, first serve or other non-discretionary basis set forth in such state or local law does not render such abatement, credit, reduction or exemption discretionary. Financial assistance includes only discretionary assistance that is negotiated or awarded by the city or by a city economic development entity, and does not include as-of-right assistance, tax abatements or benefits. Where assistance takes the form of leasing city property at below market lease rates, the value of the assistance will be determined based on the total difference between the lease rate and a fair market lease rate over the duration of the lease. Where assistance takes the form of loans or bond financing, the value of the assistance will be determined based on the difference between the financing cost to a borrower and the cost to a similar borrower that does not receive financial assistance from a city economic development entity.

Project agreement. The term “project agreement” means a written agreement between a city agency or city economic development entity and a covered developer providing for financial assistance targeted to a city development project.

Retail business. The term “retail business” means any entity that is engaged primarily in the sale of consumer goods at a store within the city, but does not include a chain business. For the purposes of this definition, the term “consumer goods” means products that are primarily for personal, household or family purposes, including but not limited to appliances, clothing, electronics, groceries and household items.

b. Affordable retail space at city development projects required. 1. Covered developers shall provide affordable retail space for retail businesses in city development projects.

2. For each city development project, the city agency or city economic development entity that executed the project agreement relating to such city development project shall determine the affordable retail space that applies to such city development project, including (i) the percentage or amount of ground floor retail space, (ii) the below market lease rate and (iii) the term of the affordable retail space. In making such determination, the city agency or city economic development entity shall conduct a neighborhood retail needs assessment that incorporates information regarding the neighborhood and commercial environment related to the location of the city development project, including but not limited to existing retail stores, retail store vacancy rates, market lease rates, presence of chain businesses, level of retail diversity and types of retail businesses needed or lacking in the neighborhood.

c. Implementation and reporting. 1. No later than January 1, 2020, the commissioner shall promulgate implementing rules as appropriate and consistent with this section. Beginning one year after the effective date of the local law that added this section and annually thereafter, the commissioner shall post on the department’s website and submit to the speaker of the council a report on the implementation and enforcement of this section during the preceding calendar year.

2. Each covered developer shall submit to the department copies of leases or rental agreements, and any extensions, renewals, amendments or modifications thereof, providing for affordable retail space executed pursuant to this section.

d. Enforcement. 1. Whenever the commissioner has reason to believe that there has been a violation of this section, or upon receipt of a complaint in writing alleging a violation of this section, the commissioner shall conduct an investigation to determine whether there has been a violation. The commissioner shall provide

written notice of the alleged violation to the covered developer and the relevant city agency or city economic development entity, and provide the covered developer an opportunity to be heard.

2. In the event that the commissioner finds that the covered developer has violated this section, the commissioner shall, in consultation with the relevant city agency or city economic development entity, take such actions against the covered developer as may be appropriate including but not limited to:

(a) Entering into an agreement with the covered developer allowing the covered developer to cure the violation;

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

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

(d) Declaring the covered developer ineligible to receive financial assistance; and

(e) Assessing actual and consequential damages.

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

§ 3. This local law takes effect 180 days after it becomes law.

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