

STATE OF NEW YORK

10281

IN ASSEMBLY

April 8, 2020

Introduced by M. of A. O'DONNELL -- read once and referred to the
Committee on Cities

AN ACT to amend the administrative code of the city of New York, in
relation to enacting the "New York city small business rent stabiliza-
tion act"

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York city small business rent stabilization act".

3 § 2. Title 22 of the administrative code of the city of New York is
4 amended by adding a new chapter 12 to read as follows:

CHAPTER 12

COMMERCIAL RENT STABILIZATION

7 § 22-1201 Application. This chapter applies to all commercial spaces
8 with a lease or other rental agreement that expires on or after July
9 first, two thousand twenty, whether or not such lease or rental agree-
10 ment was in effect on such date. This chapter shall apply only to all
11 commercial lease renewals for commercial premises. On any occasion wher-
12 ein a landlord and tenant are required to negotiate the terms of a lease
13 renewal for commercial uses such provisions of this chapter shall apply.
14 Such provisions of this chapter shall apply to any landlord and current
15 tenant whose lease expired on or after July first, two thousand twenty.

16 § 22-1202 Definitions. As used in this chapter, the following terms
17 shall have the following meanings unless the context requires otherwise:

18 a. "Administering agency" shall mean any city agency, office, depart-
19 ment, division, bureau or institution of government, the expenses of
20 which are paid in whole or in part from the city treasury, as the mayor
21 shall designate or establish to implement the provisions of this chap-
22 ter.

23 b. "At-will tenant" shall mean a tenant, subtenant, lessee, sublessee,
24 or any other persons lawfully entitled to use or occupy any commercial
25 premises without a written lease or other rental agreement, who has paid
26 rent to a landlord for at least six months.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 c. "Board" shall mean the commercial rent guidelines board established
2 by subdivision a of section 22-1203 of this chapter.

3 d. "Chain business" shall mean an establishment that is part of a
4 group of establishments that share a common landlord or principal who
5 owns at least thirty percent of each establishment where such establish-
6 ments:

7 (1) engage in the same business; or

8 (2) operate pursuant to a franchise agreement with the same franchisor
9 as defined in section six hundred eighty-one of the general business
10 law.

11 e. "Commercial space" shall mean a space used or occupied for non-re-
12 sidential purposes pursuant to a valid commercial lease or other rental
13 agreement. Such term includes only retail stores, professional offices,
14 service offices or other offices of ten thousand square feet or less and
15 manufacturing establishments or art and/or cultural establishments of
16 twenty-five thousand square feet or less. Such term does not include a
17 building owned by:

18 (1) a non-profit entity where:

19 (i) more than fifty percent of building units are rent regulated; or

20 (ii) more than thirty percent of building units are below fair market
21 rent rate and are restricted income units; or

22 (2) a housing development fund corporation pursuant to article two or
23 eleven of the private housing finance law, including buildings used as
24 Mitchell-Lama housing and any other restricted income co-op housing.

25 f. "Commissioner" shall mean the head of the administering agency.

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

29 h. "Pass-along" shall mean any taxes, sewer, water or utility fee, or
30 operating charges apportioned to a tenant in connection with the use or
31 occupancy of any commercial space.

32 i. "Rent" shall mean any consideration, including but not limited to
33 pass-alongs, received by the landlord in connection with the use or
34 occupancy of any commercial space.

35 j. "Services" shall mean those facilities which enhance the use of the
36 commercial premises, including, but not limited to, repairs, mainte-
37 nance, painting, heat, hot and cold water, utilities, elevator service,
38 security devices and patrols, furnishings, storage, janitorial and land-
39 scaping services, refuse removal, insurance protection, parking spaces
40 and facilities in common areas of the building or parcel in which the
41 rental unit is located.

42 k. "Tenant" shall mean a tenant, subtenant, lessee, sublessee, or any
43 other persons lawfully entitled to use or occupy any commercial prem-
44 ises.

45 § 22-1203 Commercial rent guidelines board. a. There shall be a
46 commercial rent guidelines board consisting of nine members appointed by
47 the mayor as follows:

48 (1) One public member to serve as the chairperson of the board;

49 (2) Two members representing commercial tenants which are not chain
50 businesses;

51 (3) Two members representing commercial landlords; and

52 (4) Four public members.

53 b. The members of the board, except the chairperson, shall serve stag-
54 gered terms of two years. Four members of the board originally
55 appointed, comprising one member representing tenants, one member
56 representing landlords and two public members, shall serve until January

1 first, two thousand twenty-three. The other members of the board
2 originally appointed, excluding the chairperson, shall serve until Janu-
3 ary first, two thousand twenty-four. Thereafter, all members shall
4 serve two-year terms on the board until their successors have been
5 appointed and qualified, except the chairperson, who shall serve at the
6 pleasure of the mayor.

7 c. The mayor shall fill any vacancy that may occur in the same manner
8 as the original appointment. A member of the board, other than the
9 chairperson, may only be removed by the mayor for cause after an oppor-
10 tunity to be heard in person or by counsel, in the member's defense,
11 upon at least ten days written notice.

12 d. The chairperson shall be the chief administrative officer of the
13 board and shall have the authority to employ, assign and supervise the
14 members of the board and enter into contracts for consultant services.
15 The commissioner shall cooperate with the board and may assign personnel
16 and perform such services in connection with the duties of the board as
17 may reasonably be required by the chairperson.

18 e. The members of the board shall be compensated on a per diem basis
19 for no more than fifty days per year at a rate to be determined by the
20 commissioner, and the chairperson shall be compensated on a per diem
21 basis for no more than one hundred days per year at a rate to be deter-
22 mined by the commissioner.

23 f. The board shall establish initial guidelines for commercial rent
24 adjustments by the first of July next succeeding appointment of the last
25 member of the board. Thereafter, the board shall establish annual
26 guidelines to be filed in accordance with subdivision g of this section.
27 In determining whether to adjust rents for commercial spaces subject to
28 the commercial rent stabilization provisions of this chapter, the board
29 shall consider, among other things:

30 (1) The economic condition of the commercial real estate industry in
31 the community board district, including such factors as:

32 (i) commercial real estate taxes and sewer and water rates;

33 (ii) gross operating and maintenance costs, including but not limited
34 to insurance rates, governmental fees, fuel and labor costs;

35 (iii) costs and availability of financing, including effective rates
36 of interest; and

37 (iv) the overall supply of commercial spaces and overall vacancy
38 rates;

39 (2) Relevant data from the current and projected market values of
40 commercial rentals in the community board district;

41 (3) The socioeconomic and demographic changes in each community board
42 district based on the most recent available data, including but not
43 limited to changes in:

44 (i) the median income level;

45 (ii) education;

46 (iii) race;

47 (iv) ethnicity; and

48 (v) home ownership; and

49 (4) Any other relevant data available to the board.

50 g. Not later than July first of each year, the board shall file with
51 the city clerk its guidelines for the preceding calendar year, and shall
52 accompany such findings with a statement of the maximum rate or rates of
53 rent adjustment, if any, for all commercial spaces subject to the
54 provisions of this chapter authorized for leases or other rental agree-
55 ments commencing on the first of October next succeeding or within

1 twelve months thereafter. Such guidelines and statement shall be
2 published in the city record.

3 h. Prior to the annual adjustment of the level of rents provided for
4 under subdivision f of this section, the board shall hold at least two
5 public hearings for the purpose of collecting information relating to
6 all factors set forth in subdivision f of this section, and any other
7 relevant information as may be necessary for establishing the annual
8 adjustment guidelines. The board shall provide notice of the date, time
9 and location and a summary of the subject matter of the public hearings,
10 to be published in the city record daily for the period beginning eight
11 days prior to the hearing date, and at least once in one or more newspa-
12 pers of general circulation at least eight days immediately preceding
13 such hearing date.

14 i. Maximum rates of rent adjustment shall not be established more than
15 once annually for any commercial space subject to the provisions of this
16 chapter. Once established, no such rate shall, within the one-year peri-
17 od, be adjusted by any surcharge, supplementary adjustment or other
18 modification except as provided in section 22-1208 of this chapter.

19 § 22-1204 Stabilization provisions. a. Upon renewal of a lease for
20 commercial space, the rent charged for the first year of the new lease
21 shall not exceed the initial legal regulated rent or legal regulated
22 rent adjusted pursuant to section 22-1208 of this chapter until the end
23 of any lease or other rental agreement in effect on the effective date
24 of this chapter until such time as a different legal regulated rent
25 shall be authorized pursuant to guidelines adopted by the board estab-
26 lished under section 22-1203 of this chapter. No landlord subject to the
27 provisions of this chapter shall charge or collect any rent that exceeds
28 the initial legal regulated rent or legal regulated rent adjusted pursu-
29 ant to section 22-1208 of this chapter until the end of any lease or
30 other rental agreement in effect on the effective date of this chapter,
31 until such time as a different legal regulated rent has been authorized
32 pursuant to guidelines adopted by the board. For any lease exceeding one
33 year, the rent charged for any subsequent year shall not exceed the
34 legal regulated rent as authorized pursuant to the most recent guide-
35 lines adopted by the board. If the rent charged for the first year of
36 the new lease is less than the initial legal regulated rent or the legal
37 regulated rent adjusted pursuant to section 22-1208 of this chapter, the
38 rent charged for any subsequent year shall not exceed the first year's
39 rent adjusted by the rate authorized pursuant to the most recent guide-
40 lines adopted by the board.

41 b. The initial regulated rent for a commercial space subject to the
42 provisions of this chapter is the rent charged in the lease or other
43 rental agreement for such commercial space in effect on the effective
44 date of this chapter.

45 c. The initial regulated rent for a commercial space subject to the
46 provisions of this chapter, that is not subject to a lease or other
47 rental agreement on the effective date of this chapter, shall be the
48 rent charged in the first lease or other rental agreement for such
49 commercial space that becomes effective after the effective date of this
50 chapter, provided that such rent shall not include any pass-alongs.
51 However, if a claim alleging commercial tenant harassment pursuant to
52 chapter nine of this title is brought against a landlord by the previous
53 tenant as the means by which the vacancy was effected and such previous
54 tenant's claim is upheld by a court of competent jurisdiction, such
55 landlord shall be liable for damages up to ten times the proposed new
56 lease's monthly rent or fifty thousand dollars, whichever is greater, to

1 be payable to the previous tenant, in addition to consequential damages
2 and any other remedy available at law or equity.

3 d. Upon a finding of commercial tenant harassment pursuant to chapter
4 nine of this title, the rent for the new tenant shall be no higher than
5 the rent that could have been charged to the previous tenant pursuant to
6 subdivision a of this section, retroactive to the beginning of the new
7 tenancy. All other terms and conditions of the lease shall conform to
8 the provisions of subdivision a of this section.

9 e. If a tenant is an at-will tenant, such tenant has the right to
10 request a written lease agreement that shall conform to the provisions
11 of subdivision a of this section and be a monthly rent equivalent to the
12 amount such tenant is paying at the time of such request. The landlord
13 of an at-will tenant shall provide a written lease offer within ninety
14 days of receiving such a request for a written lease. A landlord shall
15 only be able to refuse to provide a written lease or evict an at-will
16 tenant based on the provisions under subdivision d of section 22-1210 of
17 this chapter, except for the provision set forth in paragraph two of
18 such subdivision.

19 § 22-1205 Enforcement and procedures. a. Subject to the conditions and
20 limitations of this section, any landlord who, upon the complaint of a
21 tenant, is found by the commissioner, after a reasonable opportunity to
22 be heard, to have collected an overcharge above the rent authorized for
23 a commercial space subject to the provisions of this chapter, is liable
24 to such tenant for a penalty equal to three times the amount of such
25 overcharge. If the landlord establishes, by a preponderance of the
26 evidence, that the overcharge was not intentional, the penalty shall be
27 the amount of the overcharge plus interest assessed from the initial
28 date of such overcharge. After a complaint of rent overcharge has been
29 filed and served on a landlord, the voluntary adjustment of the rent
30 and/or the voluntary tender of a refund of rent overcharges shall not be
31 considered by the commissioner as evidence that such overcharge was not
32 willful.

33 b. The legal regulated rent for purposes of determining an overcharge
34 is the rent indicated in the annual registration statement filed and
35 served upon the tenant six years prior to the most recent registration
36 statement, or, if more recently filed, the initial registration state-
37 ment plus, for each case, any subsequent lawful increases and adjust-
38 ments. The commissioner, in investigating complaints of overcharge and
39 in determining legal regulated rent, shall consider all available rent
40 history which is reasonably necessary to make such determinations. As to
41 complaints filed within ninety days of the initial registration of a
42 commercial space, the legal regulated rent is deemed to be the rent
43 charged on the date six years prior to the date of the initial registra-
44 tion of the commercial space or, if the commercial space was subject to
45 this chapter for less than six years, the initial legal regulated rent
46 plus, in each case, any lawful increases and adjustments. Where the rent
47 charged on the date six years prior to the date of the initial registra-
48 tion of the commercial space cannot be established, such rent shall be
49 established by the commissioner based on, among other things, the
50 factors set forth in paragraph one of subdivision f of section 22-1203
51 of this chapter.

52 c. Complaints under this section may be filed with the commissioner at
53 any time, however any recovery of overcharge penalties shall be limited
54 to the six years preceding the complaint.

55 d. A landlord found to have overcharged a tenant may be assessed the
56 reasonable costs and attorneys' fees of any necessary proceeding and

1 interest from the initial date of the overcharge at the rate of interest
2 payable on a judgment pursuant to section five thousand four of the
3 civil practice laws and rules.

4 e. A tenant may, upon the expiration of the period in which the land-
5 lord may institute a proceeding pursuant to article seventy-eight of the
6 civil practice law and rules, file and enforce an order of the commis-
7 sioner awarding penalties in the same manner as a judgment.

8 f. The commissioner shall promulgate all rules and regulations neces-
9 sary for the implementation of this section.

10 § 22-1206 Rent registration. Each landlord of a commercial space
11 subject to the provisions of this chapter shall register such space with
12 the administering agency within one hundred twenty days of the effective
13 date of this chapter using forms prescribed by the commissioner. The
14 information to be provided on such forms shall include the following:

15 a. The name and address of the building or group of buildings or
16 development in which such commercial space is located and the tenant
17 thereof;

18 b. The number of commercial spaces belonging to such landlord in the
19 building or group of buildings or development in which such commercial
20 space is located;

21 c. The number of commercial spaces in such building or group of build-
22 ings or development subject to the provisions of this chapter;

23 d. The rent for the commercial space charged on the registration date;
24 and

25 e. The square footage of each commercial space named pursuant to
26 subdivision a of this section.

27 § 22-1207 Fees. a. The department of finance shall collect from the
28 landlord of each commercial space registered pursuant to section 22-1206
29 of this chapter an annual fee in the amount of one hundred dollars for
30 each commercial space subject to this chapter, in order to defray costs
31 incurred in administering this chapter.

32 b. Failure to pay the fee imposed by subdivision a of this section
33 shall constitute a charge due to the city. All such fees due to the city
34 constitute a debt recoverable from the landlord and the city may
35 commence an action or proceeding, file a lien upon the building or take
36 any other lawful action for the recovery of such fees.

37 § 22-1208 Application for adjustment of initial rent. Notwithstanding
38 any other provision of this chapter, a tenant or landlord may, within
39 sixty days of the effective date of this chapter or the commencement of
40 the first tenancy thereafter, whichever is later, file with the commis-
41 sioner an application for adjustment of the initial legal regulated rent
42 for such commercial space. The commissioner may adjust such initial
43 legal regulated rent upon a finding that the presence of extraordinary
44 circumstances materially affecting the initial legal regulated rent has
45 resulted in a rent which is substantially different from the rents
46 generally prevailing in the same area for substantially similar commer-
47 cial spaces.

48 § 22-1209 Manner of service. All papers and notices which, pursuant to
49 the terms of section 22-1210 of this chapter are required to be served,
50 shall be served by a process server, or shall be sent by first-class
51 mail and certified mail, return receipt requested or by any express mail
52 service.

53 § 22-1210 Rental guidelines. a. All leases of a commercial premises
54 may be renewed at the option of a tenant who did not lose the right to
55 renew a lease under the grounds described in subdivision d of this
56 section. Such lease renewals shall be for a minimum term of ten years,

1 provided however, that at the tenant's option, and with the written
2 approval of the landlord, a lease of shorter or longer duration may be
3 selected.

4 b. No period of lease extension required by this chapter shall extend
5 beyond the landlord's lawful ability to rent the premises to the tenant,
6 where such ability is limited by:

7 (1) the obligation to rent the premises to a third party pursuant to a
8 bona fide lease entered into prior to the effective date of this chap-
9 ter;

10 (2) the exercise by a third party of a bona fide option to rent the
11 premises provided that such option was given prior to the effective date
12 of this chapter; or

13 (3) any other lawful reason arising prior to such effective date.

14 c. A tenant shall lose the right of renewal and a landlord may refuse
15 to renew a lease only on the following grounds:

16 (1) The tenant has persistently delayed rent payments without cause.
17 For the purpose of this subdivision, "cause" is defined as the withhold-
18 ing of rental payments by the tenant due to the alleged violations of
19 the rental agreement by the landlord. In order for the landlord to be
20 excused from renewal on this ground, the landlord must have served the
21 tenant at least three prior notices during the term of the lease for
22 demand of payment within thirty days, and then show that such lessee has
23 not paid within such thirty-day period. The landlord shall not serve
24 such notice unless the rent payment was in arrears for a minimum of
25 fifteen days;

26 (2) The tenant uses the commercial premises in a manner substantially
27 different from that described in the lease;

28 (3) The tenant conducts or permits any form of illegal activity on the
29 premises;

30 (4) The tenant has substantially breached any substantive obligation
31 under the current lease and has failed to cure such breach within thirty
32 days following written notice to cure by the landlord;

33 (5) Upon the termination of the current tenancy, the landlord intends,
34 in good faith, to demolish or substantially reconstruct the premises or
35 a substantial part thereof, or to carry out substantial work or
36 construction on the commercial premises or substantial part thereof
37 which he or she could not reasonably do without obtaining possession of
38 the commercial premises. The landlord shall notify the tenant of his or
39 her decision to reoccupy the commercial premises at least one year prior
40 to the termination of the lease. In the event that the lessor fraudu-
41 lently invokes this justification for a refusal to renew a commercial
42 lease, the defrauded tenant may collect treble damages for any loss
43 suffered as a result of such action;

44 (6) The current tenancy was created by the subletting of the property,
45 whereby the prime tenant did not notify the landlord by certified mail
46 of the subtenant's existence and did not obtain the written consent of
47 the landlord. This ground is void if the landlord and tenant had agreed
48 in the lease to allow subleasing rights without the consent of the land-
49 lord and all obligations of the prime tenant on the issue, were in
50 compliance;

51 (7) It has been determined by the administering agency or by a civil
52 court of competent jurisdiction that the tenant is a gross and persist-
53 ent violator of New York city tax laws, of any license obligations
54 related to the use of the premises or of any laws of the city of New
55 York; or

1 (8) Upon the termination of the current tenancy, the landlord intends
2 to occupy the retail premises in order to carry out its own business,
3 which cannot be the same type of business that the current tenant is
4 operating. The landlord shall notify the tenant of his or her decision
5 to reoccupy the premises at least one hundred eighty days prior to the
6 termination of the lease. In the event that the landlord fraudulently
7 invokes this justification for a refusal to renew a commercial lease,
8 the defrauded tenant may collect treble damages for any loss suffered as
9 a result of such action.

10 § 22-1211 Retaliation. No landlord shall in any way retaliate against
11 any tenant for the tenant's assertion or exercise of any rights under
12 this chapter. Any such retaliation may subject the landlord to a suit
13 for actual and punitive damages, injunctive relief, and attorneys' fees.

14 § 22-1212 Waiver. No provision in any lease, rental agreement, or
15 agreement made in connection therewith which waives or diminishes any
16 tenant's rights under this chapter is valid.

17 § 22-1213 Inconsistency with other laws. If any provision of this
18 chapter is inconsistent with, in conflict with, or contrary to any other
19 provisions of law, such provision of this chapter shall prevail over
20 such other provision.

21 § 3. Severability. If any clause, sentence, paragraph, section or part
22 of this act shall be adjudged by any court of competent jurisdiction to
23 be invalid and after exhaustion of all further judicial review, the
24 judgment shall not affect, impair or invalidate the remainder thereof,
25 but shall be confined in its operation to the clause, sentence, para-
26 graph, section or part of this act directly involved in the controversy
27 in which the judgment shall have been rendered.

28 § 4. This act shall take effect on the thirtieth day after it shall
29 have become a law. Effective immediately, the addition, amendment
30 and/or repeal of any rule or regulation necessary for the implementation
31 of this act on its effective date are authorized to be made and
32 completed on or before such effective date.