STATE OF NEW YORK

1192

2021-2022 Regular Sessions

IN ASSEMBLY

January 7, 2021

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 stabilization act"

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

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

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

CHAPTER 12

COMMERCIAL RENT STABILIZATION

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

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

a. "Administering agency" shall mean any city agency, office, department, division, bureau or institution of government, the expenses of which are paid in whole or in part from the city treasury, as the mayor shall designate or establish to implement the provisions of this chapter.

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

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

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

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

(1) engage in the same business; or

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

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

(1) a non-profit entity where:

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

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

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

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

g. "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.

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

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

j. "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 facilities in common areas of the building or parcel in which the rental unit is located.

k. "Tenant" shall mean a tenant, subtenant, lessee, sublessee, or any other persons lawfully entitled to use or occupy any commercial premises.

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

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

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

(3) Two members representing commercial landlords; and

(4) Four public members.

b. The members of the board, except the chairperson, shall serve staggered terms of two years. Four members of the board originally appointed, comprising one member representing tenants, one member representing landlords and two public members, shall serve until January first, two thousand twenty-four. The other members of the board originally appointed, excluding the chairperson, shall serve until January first, two thousand twenty-five. Thereafter, all members shall serve two-year terms on the board until their successors have been appointed and qualified, except the chairperson, who shall serve at the pleasure of the mayor.

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

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

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

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

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

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

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

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

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

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

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

(i) the median income level;

(ii) education;

(iii) race;

(iv) ethnicity; and

(v) home ownership; and

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

g. Not later than July first of each year, the board shall file with the city clerk its guidelines for the preceding calendar year, and shall accompany such findings with a statement of the maximum rate or rates of

rent adjustment, if any, for all commercial spaces subject to the provisions of this chapter authorized for leases or other rental agreements commencing on the first of October next succeeding or within twelve months thereafter. Such guidelines and statement shall be published in the city record.

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

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

§ 22-1204 Stabilization provisions. a. Upon renewal of a lease for commercial space, the rent charged for the first year of the new lease shall not exceed the initial legal regulated rent or legal regulated rent adjusted pursuant to section 22-1208 of this chapter until the end of any lease or other rental agreement in effect on the effective date of this chapter until such time as a different legal regulated rent shall be authorized pursuant to guidelines adopted by the board established under section 22-1203 of this chapter. No landlord subject to the provisions of this chapter shall charge or collect any rent that exceeds the initial legal regulated rent or legal regulated rent adjusted pursuant to section 22-1208 of this chapter until the end of any lease or other rental agreement in effect on the effective date of this chapter, until such time as a different legal regulated rent has been authorized pursuant to guidelines adopted by the board. For any lease exceeding one year, the rent charged for any subsequent year shall not exceed the legal regulated rent as authorized pursuant to the most recent guidelines adopted by the board. If the rent charged for the first year of the new lease is less than the initial legal regulated rent or the legal regulated rent adjusted pursuant to section 22-1208 of this chapter, the rent charged for any subsequent year shall not exceed the first year's rent adjusted by the rate authorized pursuant to the most recent guidelines adopted by the board.

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

c. The initial regulated rent for a commercial space subject to the provisions of this chapter, that is not subject to a lease or other rental agreement on the effective date of this chapter, shall be the rent charged in the first lease or other rental agreement for such commercial space that becomes effective after the effective date of this chapter, provided that such rent shall not include any pass-alongs. However, if a claim alleging commercial tenant harassment pursuant to chapter nine of this title is brought against a landlord by the previous tenant as the means by which the vacancy was effected and such previous

tenant's claim is upheld by a court of competent jurisdiction, such landlord shall be liable for damages up to ten times the proposed new lease's monthly rent or fifty thousand dollars, whichever is greater, to be payable to the previous tenant, in addition to consequential damages and any other remedy available at law or equity.

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

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

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

b. The legal regulated rent for purposes of determining an overcharge is the rent indicated in the annual registration statement filed and served upon the tenant six years prior to the most recent registration statement, or, if more recently filed, the initial registration statement plus, for each case, any subsequent lawful increases and adjustments. The commissioner, in investigating complaints of overcharge and in determining legal regulated rent, shall consider all available rent history which is reasonably necessary to make such determinations. As to complaints filed within ninety days of the initial registration of a commercial space, the legal regulated rent is deemed to be the rent charged on the date six years prior to the date of the initial registration of the commercial space or, if the commercial space was subject to this chapter for less than six years, the initial legal regulated rent plus, in each case, any lawful increases and adjustments. Where the rent charged on the date six years prior to the date of the initial registration of the commercial space cannot be established, such rent shall be established by the commissioner based on, among other things, the factors set forth in paragraph one of subdivision f of section 22-1203 of this chapter.

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

d. A landlord found to have overcharged a tenant may be assessed the reasonable costs and attorneys' fees of any necessary proceeding and interest from the initial date of the overcharge at the rate of interest payable on a judgment pursuant to section five thousand four of the civil practice laws and rules.

e. A tenant may, upon the expiration of the period in which the landlord may institute a proceeding pursuant to article seventy-eight of the civil practice law and rules, file and enforce an order of the commissioner awarding penalties in the same manner as a judgment.

f. The commissioner shall promulgate all rules and regulations necessary for the implementation of this section.

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

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

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

c. The number of commercial spaces in such building or group of buildings or development subject to the provisions of this chapter;

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

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

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

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

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

§ 22-1209 Manner of service. All papers and notices which, pursuant to the terms of section 22-1210 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 or by any express mail service.

§ 22-1210 Rental guidelines. a. All leases of a commercial premises may be renewed at the option of a tenant who did not lose the right to

renew a lease under the grounds described in subdivision d of this section. Such lease renewals shall be for a minimum term of ten years, provided however, that at the tenant's option, and with the written approval of the landlord, a lease of shorter or longer duration may be selected.

b. No period of lease extension 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:

(1) 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;

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

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

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

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

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

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

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

(5) Upon the termination of the current tenancy, the landlord intends, in good faith, to demolish or substantially reconstruct the premises or a substantial part thereof, or to carry out substantial work or construction on the commercial premises or substantial part thereof which he or she could not reasonably do without obtaining possession of the commercial premises. The landlord shall notify the tenant of his or her decision to reoccupy the commercial premises at least one year prior to the termination of the lease. In the event that the lessor 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;

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

(7) It has been determined by the administering agency or by a civil court of competent jurisdiction that the tenant is a gross and persistent violator of New York city tax laws, of any license obligations

related to the use of the premises or of any laws of the city of New York; or

(8) Upon the termination of the current tenancy, the landlord intends to occupy the retail premises in order to carry out its own business, which cannot be the same type of business that the current tenant is operating. The landlord shall notify the tenant of his or her decision to reoccupy the premises at least one hundred eighty days 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.

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

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

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

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

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