

Int. No. 1408-B

By Council Members Espinal, Cumbo, Chin, Rosenthal, Rivera, Kallos, Lander, Gjonaj, Levin, Ayala and Barron

A Local Law to amend the administrative code of the city of New York, in relation to affordable retail space in financially assisted development projects, and to provide for the expiration of the provisions relating thereto

Be it enacted by the Council as follows:

1           Section 1. Section 22-823 of the administrative code of the city of New York is amended  
2 by adding a new subdivision i to read as follows:

3           i. Reporting on affordable retail space requirement in certain project agreements. 1. For  
4 purposes of this subdivision, the terms “affordable retail space,” “covered developer,” “covered  
5 development project,” and “project agreement” have the same meanings as set forth in subdivision  
6 a of section 22-825.

7           2. For covered development projects where the project agreement was executed during the  
8 preceding fiscal year, the annual report required by this section shall include:

9           (a) A description of any covered development project where the covered developer was  
10 required to provide affordable retail space pursuant to section 22-825;

11           (b) For each such project, the minimum amount of affordable retail space that such project  
12 was required to include, and the maximum below market lease rate permitted to be charged for  
13 such space;

14           (c) The number of covered development projects where a determination was made pursuant  
15 to paragraph 1 of subdivision b of section 22-825 that affordable retail space need not be provided;

16           (d) For each such covered development project, an explanation of the basis for such  
17 determination, including a summary of the results of each component of the neighborhood retail  
18 needs assessment, as set forth in subdivision a of section 22-825;

1           (e) The number of covered development projects where the covered developer was not  
2 required to provide affordable retail space pursuant to paragraph 3 of subdivision b of section 22-  
3 825; and

4           (f) For each such covered development project, a description of the community program,  
5 service or benefit, the provision of which the contracted entity determined would be hindered by  
6 the inclusion of an affordable retail requirement.

7           3. The annual report shall also include:

8           (a) Any finding by the contracted entity, during the preceding fiscal year, that a covered  
9 developer has failed to fulfill any obligation in the project agreement relating to providing  
10 affordable retail space; and

11           (b) Any action taken by such entity, during the preceding fiscal year, as a result of such  
12 finding.

13           § 2. Subchapter 2 of chapter 8 of title 22 of the administrative code of the city of New York  
14 is amended by adding a new section 22-825 to read as follows:

15           § 22-825 Affordable retail space at covered development projects. a. Definitions. For  
16 purposes of this section, the following terms have the following meanings:

17           Adjusted by the CPI. The term “adjusted by the CPI” means, commencing January 1, 2021,  
18 the amount so adjusted shall be adjusted based upon the percentage change, if any, in the consumer  
19 price index for all urban consumers published by the bureau of labor statistics of the United States  
20 department of labor for the geographic region New York – Newark – Jersey City (1982-84 = 100),  
21 or any successor index thereto, from January 1, 2021, to January 1 of the year in which such  
22 adjustment is made.

1           Affordable housing project. The term “affordable housing project” means any project for  
2 the improvement or development of real property that contains a multiple dwelling where no less  
3 than 30 percent of the residential units are subject to a regulatory agreement, restrictive declaration  
4 or similar written instrument requiring that such units be maintained as affordable units for a period  
5 of no less than 30 years.

6           Affordable retail space. The term “affordable retail space” means a portion of space in a  
7 covered development project that is available for lease to a retail business at a below market lease  
8 rate.

9           Assisted living facility. The term “assisted living facility” means any facility utilized to  
10 provide or support assisted living, home care or hospice services licensed or certified pursuant to  
11 the public health law, the social services law or the mental hygiene law.

12           Chain business. The term “chain business” means an establishment that is part of a group  
13 of establishments that share a common owner or principal who owns at least 30 percent of each  
14 establishment in such group and such establishments (i) engage in the same business or (ii) operate  
15 pursuant to franchise agreements with the same franchisor as such term is defined in section 681  
16 of the general business law.

17           Consumer goods. The term “consumer goods” means products that are primarily for  
18 personal, household or family purposes, including but not limited to small appliances, clothing,  
19 electronics, groceries and household items.

20           Consumer services. The term “consumer services” means services that are primarily for  
21 personal, household or family purposes, including but not limited to food and drink establishments,  
22 personal services, medical services, repair services or household services.

1 Covered developer. The term “covered developer” means any person receiving financial  
2 assistance for a covered development project, unless such person is a not-for-profit corporation  
3 with an annual gross revenue of less than \$7,500,000, adjusted by the CPI, in each of the last five  
4 years.

5 Covered development project. The term “covered development project” means a project  
6 for the improvement or development of real property pursuant to a project agreement for the  
7 purpose of economic development, job retention or growth, or other similar purposes where such  
8 project has received or is expected to receive financial assistance valued at no less than  
9 \$15,000,000, adjusted by the CPI, and such project is expected to be greater than 750,000 square  
10 feet and to contain space available for lease to a retail business, except that a “covered development  
11 project” does not include any project located within an industrial business zone as such term is  
12 defined in section 22-626, or any project for a human or client services facility, a production  
13 facility, an affordable housing project, a life sciences facility, a photovoltaic system project, a  
14 health care facility or an assisted living facility, as such terms are defined in this section.

15 Financial assistance. The term “financial assistance” means any loans, grants, tax credits,  
16 tax exemptions, tax abatements, subsidies, mortgages, debt forgiveness, land conveyances for less  
17 than appraised value, or other thing of value allocated, conveyed or expended by the city or by a  
18 contracted entity for a covered development project, other than as-of-right assistance, tax  
19 abatements or benefits, including but not limited to, benefits approved in accordance with sections  
20 421-a or 489 of the New York state real property tax law, or any assistance provided in a project  
21 agreement, the amount of which is based upon an evaluation of as-of-right assistance, tax  
22 abatements or benefits for which the covered developer would have been eligible.

1 Health care facility. The term “health care facility” means a hospital, nursing home or  
2 residential health care facility as such terms are defined in section 2801 of the public health law,  
3 or any facility or institution certified under article 31 of the mental hygiene law.

4 Human or client services facility. The term “human or client services facility” means real  
5 property used for the provision of human or client services pursuant to a contract with any city,  
6 state or federal agency, public authority or public benefit corporation.

7 Life sciences facility. The terms “life sciences facility” means real property used for  
8 research, development, technology transfer and commercialization related to any life science field.

9 Neighborhood. The term “neighborhood” means the geographical area surrounding a  
10 covered development project up to one-quarter of a mile from such project.

11 Neighborhood retail needs assessment. The term “neighborhood retail needs assessment”  
12 means an assessment of the retail environment of a neighborhood, which shall include, but need  
13 not be limited to an examination of:

14 (a) The neighborhood’s existing retail stores, vacancy rates for property that could be  
15 leased for retail businesses and market lease rates for such property;

16 (b) The presence of chain businesses in the neighborhood;

17 (c) The level of retail diversity and the types of retail businesses needed or lacking in the  
18 neighborhood; and

19 (d) Any community feedback received relating to the covered development project,  
20 including community needs and priorities.

21 Photovoltaic system project. The term “photovoltaic system project” means a project to  
22 construct, maintain, alter or operate a photovoltaic system that is connected to the electrical system

1 and operated in conjunction with the transmission and distribution facilities of an electric  
2 corporation.

3 Production facility. The term “production facility” means real property where no less than  
4 30 percent of the square footage of such property is utilized for manufacturing, warehousing or  
5 distribution.

6 Project agreement. The term “project agreement” means a written agreement between the  
7 city or a contracted entity and a covered developer providing for financial assistance for a covered  
8 development project, provided that such agreement is administered by a contracted entity.

9 Retail business. The term “retail business” means any entity that is engaged primarily in  
10 the sale of consumer goods or consumer services at a store within the city, but does not include a  
11 chain business.

12 b. Affordable retail space at covered development projects required. 1. Prior to execution  
13 of a project agreement for a covered development project, a determination shall be made regarding  
14 whether affordable retail space for retail businesses must be provided in such project to meet an  
15 unmet need for consumer goods and consumer services in such neighborhood. Such determination  
16 shall be based upon a neighborhood retail needs assessment and shall be made by the party entering  
17 into such project agreement with the covered developer or by the designee of such party.

18 2. Where such party or such party’s designee determines, pursuant to paragraph 1, that  
19 affordable retail space in a covered development project must be provided, such party or such  
20 party’s designee shall establish the minimum percentage of affordable retail space that such project  
21 shall include, the maximum below market lease rate for which such affordable retail space may be  
22 leased, and the eligible type of retail business that may lease such space, based on a consideration  
23 of the following factors:

1           (a) Retail diversity and unmet needs for consumer goods and consumer services in the  
2 neighborhood in which such covered development project is located;

3           (b) Market lease rates for retail businesses in such neighborhood; and

4           (c) Commercial vacancy rates in such neighborhood.

5           3. Such party or such party's designee may determine that a requirement for affordable  
6 retail space does not apply to a covered development project where such party or such party's  
7 designee determines that such requirement would substantially hinder the provision of any  
8 community program, service or benefit required by the project agreement.

9           c. Enforcement. 1. Within 30 days after the date by which 80 percent of space available for  
10 rent to a retail business in a covered development project has been leased, the covered developer  
11 for such project shall certify to the contracted entity administering the project agreement that such  
12 developer is in compliance with the terms of the project agreement relating to the provision of  
13 affordable retail space.

14           2. A contracted entity shall investigate any allegations that a covered developer has failed  
15 to comply with the terms of the project agreement relating to the provision of affordable retail  
16 space.

17           3. A finding that a covered developer has failed to provide affordable retail space as  
18 required by the project agreement may result in any of the following actions by the contracted  
19 entity administering such project agreement:

20           (a) Entering into an agreement with the covered developer requiring such developer to  
21 fulfill such terms;

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

1           (c) Recovering from the covered developer part or all of the financial assistance disbursed  
2 or provided to such developer, including but not limited to requiring repayment of any taxes or  
3 interest abated or deferred; or

4           (d) Reporting such failure by the covered developer in the report required by subdivision a  
5 of section 22-824.

6           § 3. This local law does not apply to any project agreement executed prior to the effective  
7 date of this local law, except that any extension, renewal, amendment or modification of such a  
8 project agreement occurring on or after the effective date of this local law that results in the grant  
9 of any additional financial assistance to the covered developer shall subject the covered  
10 development project to the requirements of this local law.

11           § 4. This local law takes effect 180 days after it becomes law and expires and is deemed  
12 repealed seven years after it becomes law.

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