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COMMUNITY BOARD NO. 2, MANHATTAN

3 WASHINGTON SQUARE VILLAGE
NEW YORK, NY 10012-1899
www.cb2manhattan.org
P: 212-979-2272 F: 212-254-5102 E: info@cb2manhattan.org
Greenwich Village ❖ Little Italy ❖ SoHo ❖ NoHo ❖ Hudson Square ❖ Chinatown ❖ Gansevoort Market

ECONOMIC DEVELOPMENT AND SMALL BUSINESS COMMITEE

January 2021

The Economic Development and Small Business Committee of Community Board #2, Manhattan held its monthly meeting on January 27th, 2021, at 6:30 p.m. via Video Conference.

Board Members Present: Janet Liff (Chair), Bo Riccabono (Vice-Chair), Valerie De La Rosa, Davd Gruber, Daniel Miller, Frederica Sigel, Scott Sartiano, Michael Levine, Mathew Metzger, Roscio Sanchez, Donna Raftery, Patricia Lorea, Michael Levine.

Board Members Absent with notification:

NYS Senator Brian Kavanagh's office presented on the Recovery Leases Bill, Senate Bill S8903. by and NYS Senator Brad Hoylman's office presented on proposed legislation regarding Commercial Rent Relief . S.3349 (Hoylman) / A.3190 (Epstein). More information here, https://www.saveourstorefronts.nyc/

Senator Kavanaghs Bill:

Daniel Mosher, Senator Kavanagh's new Legislative Director, presented on the Covid-19 small business recovery lease act. The bill creates a framework for cities to offer tax abatements to property owners in exchange for their entering into leases with small businesses for a period beginning March 7th, 2020, of no shorter than ten years, at a maximum rent as determined by the city. As part of this new lease, any arrears will be settled. This bill will only apply to a property that a tenant currently occupies or a vacant property. A small business per Section 131 of the economic development law is "one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons." The hope is to pass the bill in the senate by June and for the city to work out the details and create the program in 2021. The program will run for 2 years.

The bill offers guardrails for municipalities and, as such, is intentionally vague. Again, each municipality will determine how to measure hardship, the maximum rent and the form and amount of tax abatement.

The committee appreciates the bill as a useful tool to help landlords and tenants bridge a gap and reach an agreement on lease terms. It accomplishes this by bringing a third party to the

negotiations, i.e. the city, in addition to the landlord and tenant. The committee also appreciates that this is not mandatory and leaves landlords with agency. However, the devil will be in the details. Some concerns:

1) Lack of detail. Is the bill too much flexible? The state covers taxation issues. Is the state washing its hands of too much responsibility? The leads to the second concern:
2) Timing. The City is notoriously slow and these details are complex. Is it realistic to expect this bill to be done by late 2021? Will that be too late? This city is in a tailspin now and every day more business close.
3) Market Rent: one of the key components of the bill is setting a "favorable" or below market rent. Right now, with everything in flux, there is no market. This presents a catch-22: Landlords and tenants can't agree on the market, which is why we need the bill but if we can't set the market, how can we have this bill? Perhaps the rent should be based on a formula instead, for instance setting a number that caps the net operating income on the property or something equivalent.
4) Lease Term: Because the crisis will be relieved by 2022 or 2023, why insist on a ten-year term? For tenants, stability is very important. On the other hand, the market could right itself fairly quickly and has done so in the past. The bill also targets non-profits and small office tenants, many of whom cannot project 10 years out.
5) Ensuring that the benefits are balanced. In negotiations, benefits tend to flow to the stronger party. How do we ensure that all the benefits don't flow to the landlord?
6) Using the employee count to determine eligibility. Is 25 f/t employess to small? Perhaps eligibility should be based on square feet?
7) Retroactive or not? What if a landlord entered a deal at favorable terms before the legislation took effect? Would they qualify for an abatement?
8) If the tenant defaults of the lease, what happens to the abatement?
9) Self-dealing needs to be addressed. What if a landlord creates a "below market" lease with an entity that landlord controls in order to get the tax abatement?
10) Is this a "wolf in sheep's clothing" and an attempt to impose rent regulation on commercial property?
11) Will the program end when the 2 year period is up or become an entitlement?
12) Will the program create more havoc and confusion than help?

Save our Storefronts. S.3349 (Hoylman) / A.3190 (Epstein)

Burton Phillips, the Chief of Staff and Counsel to Senator Holyman, presented the bill and emphasized that it is in early stages and can be revised. The intent of the bill is to reverse the tidal wave of closings, help businesses stay in place and ensure that Landlords do not lose substantial income. In it, everyone takes hit: the businesses, the landlords and the government.

As it stands, the bill applies to business with under 25 full time employees who can prove their rent has been reduced by the pandemic. It will cover the period beginning March 7, 2020 and end 180 days after the State of Emergency is declared over. It requires the tenant to pay 20% of their income or 30% of their contractual rent as rent, whichever is less, and the landlord to

reduce the contractual rent by 20%. The government will pay the landlord the difference between the new required payment and 80% of the old rent. To set the new payment due, tenants will be required to provide the landlord and Department of Finance with a "sworn affidavit affirming the actual income for the thirty days prior to the date such rent was due for each month for which the tenant is seeking a reduction". All funds for this program, whether state or federal, will flow through the Empire State Development Agency. The bill is mandatory and retroactive.

We applaud the concept of shared sacrifice and this effort to save our small businesses who have taken a huge hit during this pandemic and are being forced to close but are concerned that the bill is too complicated, too costly and interfers with the landlord/tenant relationship.

Our specific concerns/questions:

1. Being mandatory.
2. The size of the proposed funding for the gap between the required payments vs. 80% of the contractual amount due. How long with $500,000,000 last? If the $500,000,000 is too low, will the required lay out be too high? The state can't afford an outlay of a billion dollars.
3. Being retroactive. Does this put even more pressure on the 500 million? How does this effect landlords and tenants who have reached agreements? Will landlords be forced to re-negotiate?
4. What happens to businesses who use a lot of cash and don't keep formal records, the case for a lot of small businesses, especially immigrant owned businesses?
5. Is insuring that Landlords get 80% of their pre-Covid rent the right percent? Is that too generous given the size of available funds? Landlords are already entering new leases at discounts exceeding this amount.
6. What if the state of emergency gets extended beyond 2nd or 3rd quarter of 2021?
7. How quickly will the landlord be reimbursed for the aforementioned difference?
8. Is the summary proceeding language to vague?
9. Setting the tenant's responsibility at 20% of their income or 30% of the face rent, whichever is less. If 20% of the income exceeds 30% of the rent, the business is doing okay. Given the limited funds, eliminating the lesser of makes sense.
10. Is setting the eligibility at 25 full time employees too restrictive? Should this one be set at square footage too?
11. Does the City have the capacity to review the monthly statement from the tenant in a timely manner and/or will the onus be on the landlord to become a forensic accountant and review and accept or contest the tenant's monthly income statement?
12. Is this a move towards rent control and does it disregard the free market which allows landlords and tenants to negotiate terms?

The committee appreciates that both bills attempt to bridge a gap between tenants and landlords because far too often the landlord/tenant relationship is adversarial and that is counter productive. However, both bills raise lots questions. The committee looks forward to seeing the revisions.