NEW YORK CITY BAR

REPORT ON LEGISLATION BY THE
REAL PROPERTY LAW COMMITTEE AND
COOPERATIVE AND CONDOMINIUM LAW COMMITTEE

Int. 0851-A **Council Members Cornegy, Levine, Chin, Constantinides, Cumbo, Gibson, Koslowitz, Rosenthal, Johnson, Reynoso, Menchaca, Wills, Rodriguez**

A Local Law to amend the administrative code of the city of New York, in relation to curtailing harassment of small businesses and other non-residential tenants

THIS LEGISLATION IS OPPOSED

INTRODUCTION

The Committees have reviewed and analyzed the above legislation,[1] which presents the following question: can the New York City Council regulate non-residential rental property, including retail and office properties, by outlawing and creating a private cause of action for very broadly defined "harassment," which includes a landlord's refusal to extend or renew a lease, and/or requiring an "unreasonable" payment as a condition for such extension or renewal? We believe the answer is no. Despite its laudable intent, the bill cannot be supported because (i) in large part, certain provisions that amount to commercial rent control are beyond the authority of the City Council to enact; (ii) even if all of the provisions would not be deemed the equivalent of commercial rent control, and therefore, insupportable, the bill's definitions are so vague and broad as to have significant unintended consequences; and (iii) the bill does not provide a landlord with adequate opportunity to raise, by affirmative defense, the legitimate reason(s) for taking certain action vis-à-vis the occupied space.

Proposed Intro. 0851-A is intended to protect "Mom and Pop" stores by preventing harassment of such tenants, a laudable goal. However, given the uniformity of case law narrowly construing local government authority in this area under the "property, affairs or government" and "health and welfare" powers, the New York City Council does not presently have the power to enact several provisions of the legislation which amount, in our view, to commercial rent control. Moreover, given its broad definitions, the enactment of certain other provisions of Proposed Intro. 0851-A may have serious adverse consequences for all owners of property with office, professional and commercial space, but not actually help the "small businesses" that the proposed legislation is intended to help. It may also adversely affect the quality of life for residential tenants.

[1] This report was prepared by a working group of the Leasing Subcommittee of the Real Property Law Committee: Steven Kirkpatrick, Isabel Pedras, Edward Kang and Jo-Ann H. Whitehorn (Chair). Phyllis H.Weisberg, Chair of the Cooperative and Condominium Law Committee, also contributed to the preparation of this report.

BACKGROUND

On July 23, 2015, City Council Members Robert E. Cornegy, Jr. and Mark Levine, respectively, Chair and member of the Committee on Small Business, introduced a new bill to the City Council, Int. 0851, titled "A Local Law to amend the administrative code of the city of New York, in relation to curtailing harassment of small businesses and other non-residential tenants." Int. 0851 adds a new Chapter 9 to the administrative code under Title 22 (Economic Affairs). The bill purports to curtail harassment by providing private causes of action and defenses in the event of conduct which is deemed to be harassment, which includes under § 22-911(a)(10), "[r]efusing to negotiate with a tenant for renewal or extension of an existing lease agreement or requiring the payment of an unreasonable sum as a precondition to such negotiations."

The applicability of the bill is overbroad. For example, since the beneficiaries of the bill are all "small businesses and other non-residential tenants," [emphasis added] they include large office space tenants and well capitalized financial institutions, including Citibank, JPMorgan Chase, investment banks, hedge funds, large multi-national law firms, and national and large local retail chain tenants such as Duane Reade, McDonalds and Starbucks. The beneficiaries even include the developer of office buildings or large residential projects under a ground lease, or the sponsor of a co-op or condominium conversion who is the tenant under a "sweetheart" lease, i.e. a long-term lease imposed on the co-op or the condominium that is extremely favorable to the sponsor. Such sweetheart leases were condemned by the Condominium and Cooperative Abuse Relief Act of 1980, 15 U.S.C. §3601 et seq.. This bill, then, appears to contravene the public policy, articulated in that Federal legislation, by requiring that the extension of such a lease be negotiated.

On September 25, 2015, the Committee on Small Business introduced Proposed Int. 0851-A ("0851-A"), a slightly amended version of Int. 0851, and held a public hearing to elicit comments. The legislative intent behind the bill also was made clear. At the hearing, Councilman Levine expressed his frustration that there are protections available for residential tenants, but not for commercial tenants. He remarked that the current situation is like "the wild west when a commercial tenant's lease is up." (Transcript of the Minutes of the Committee on Small Business, dated September 25, 2015 "Minutes" tr at 10, line 25; at 11, line 2). Councilman Levine's concern is that non-residential tenants are at "the mercy of the landlord" because if they did not negotiate renewal rights in their original lease, landlords can raise their rent or unilaterally refuse to extend or renew their leases. (Minutes tr at 11, line 2). City Council members were also concerned that some landlords withheld services to non-residential tenants to force them to leave their space prior to the end of the lease term.

Although City Council members, as a matter of public policy, may want to help "Mom and Pop businesses" (Minutes tr at 12, lines 16-17) – an understandable goal - the bill's definitions go much farther. "Covered property" is defined simply as any non-residential real property that is occupied by a tenant pursuant to a current or expired lease, and a "tenant" is defined as any person occupying a non-residential property pursuant to a current or expired lease. A "tenant's invitee" is a person whom a tenant has expressly or impliedly invited to enter

covered property. *See* §22-901.[2] Thus, a large financial institution leasing 30 floors in an office building would be fully covered, as would a national tenant renting 100 stores in the City - - tenants with much more bargaining power and money than many landlords; tenant protections under the bill extend far beyond small businesses to tenants that do not need such protection. Many of the landlords who own "covered property" may themselves be a small business as small business is not defined in the proposed legislation. Some of the landlords may be governmental entities, religious institutions or other not-for-profit corporations, or low or moderate income co-ops that need the revenue generated by retail or garage tenants to reduce operating costs. Even co-ops with wealthy shareholders are not as well capitalized as some large retailers who may be tenants.

The bill requires significant amendment in order to avoid these unintended consequences and ensure that it is applicable only to the "Mom and Pop" stores that are the focus of the legislative intent of the bill.

The bill's enumerated list of prohibited conduct, if undertaken with the intent to cause a tenant to vacate covered property or to surrender or waive a right under the lease, is also painted with very broad strokes. Not only does a landlord commit harassment when it uses force or threats against a tenant (*see* §22-911(a)(1)), but also, the landlord can be charged with harassment when it engages in other possibly innocent conduct which has the result of:

- causing an interruption or discontinuance of an essential service [not defined], or interfering with the tenant's business by interrupting or discontinuing such essential service. *See* §22-911(a)(2-4);

- removing from covered property any personal property belonging to a tenant or a tenant's invitee. *See* §22-911(a)(6).

- removing from covered property a door, window or lock or a mechanism connected to a door, window or lock *See* §22-911(a)(7).

- preventing a tenant or a tenant's invitee from entering covered property occupied by such tenant. *See* §22-911(a)(8).

- commencing unnecessary [not defined] construction or repairs on or near covered property, which construction or repairs substantially interfere with the tenant's business. *See* §22-911(a)(9).

- refusing to negotiate with a tenant for renewal or extension of an existing lease or requiring the payment of an unreasonable sum [not defined] as a precondition to such negotiations. *See* §22-911(a)(10).

[2] The definition of "tenant's invitee" is so broad and vague as to arguably include a subtenant that was not approved by the landlord. A landlord who tries to remove such a subtenant may therefore be charged with harassment under several sections.

Another shortcoming of the bill is that it provides affirmative defenses to the prohibited actions in only two subsections - - only with respect to Section (a)(7) (involving the removal of a door, window or lock, when done as a bona fide repair or replacement) and Section (a)(8) (if the entry is prohibited due to an emergency, construction or repair, and doing so is necessary to protect the tenant or a tenant's invitee). *See* §22-911(b)(1-2). There is inexplicably not an affirmative defense to any other landlord conduct listed in the bill. For example, while essential services are not defined, it is not an affirmative defense if a landlord discontinues a utility or elevator service in an office building in order to repair such utility line or elevator §22-911(a)(2-4). There is no affirmative defense to the charge of "unnecessary construction or repairs on or near covered property …which substantially interfere[s] with the tenant's business," so that a landlord who lays a new sidewalk to replace a cracked one, or erects a sidewalk shed to protect the public, as required by law in order to repair the façade of the building where the covered premises is located, may be charged with harassment under §22-911(a)(9). Notably, the erection of a sidewalk shed that may be required in connection with window repair or replacement sometimes leads to litigation with commercial tenants who claim that a sidewalk shed adversely impacts their business. The passage of the bill with this text will create a dilemma for property owners: should they repair their buildings or risk a lawsuit alleging harassment in which a court decides if such repairs were necessary?

None of the following circumstances is an affirmative defense to a landlord's refusal to negotiate a new lease with a non-residential tenant, so that the refusal to negotiate on any of these grounds likely will lead to litigation over the landlord's intent:

- that the landlord wants to do a major repair to the covered property or the building in which the covered property is located which can be done only to vacant space;

- that the landlord wants to use the covered property for some other purpose including for its own business or, in the case of a house of worship or other religious institution or another not-for-profit corporation, that has tried to increase revenue by renting space to third parties now wants to recapture the space for its own programmatic needs;

- that a co-op landlord wants to allocate shares to covered property and sell such shares to have a reserve for repairs to the building; that the non-residential tenant is creating quality of life issues for the residential tenants that live above or near the non-residential tenant (e.g. creating odors, noise or drawing unruly crowds);

- that the non-residential tenant operates its business in violation of applicable law or in violation of the terms of its lease;

- that another tenant may have an option to expand into the subject non-residential tenant's space or has contacted the landlord about its desire to expand its business (and employ more people) in such "covered property";

- that the landlord may, for legitimate business purposes, desire to consolidate spaces; and,

- that the non-residential tenant pays rent consistently late creating a cash-flow problem for the landlord or is even a "dead-beat" tenant that does not pay the rent due under the lease.

A tenant who can demonstrate harassment and has been harmed, may bring an action against the landlord in a court of competent jurisdiction. *See* §22-912. The tenant's remedies include:

- possession of the real property, if dispossessed. *See* §22-912(a)(1);

- damages, the greater of: (i) actual damages, (ii) one month's rent, or (iii) $1,000 *See* §22-912(a)(2); and

- attorneys' fees *See* §22-912(a)(3).

These damages are allowed even if the applicable lease contains a liquidated damages provision, or otherwise limits damages because any negotiated provision of a lease agreement that conflicts with the bill is deemed to be void as against public policy. *See* §22-913. In addition, a court can exercise all of its equitable powers to fashion other relief. *See* §22-912(b).

At the hearing, Andrew Schwartz, the Acting Commissioner of the NYC Department of Small Business Services ("SBS") raised concerns that the bill could conflict with State law, specifically with regard to a landlord's ability to refuse to renew a commercial tenant's lease. (Minutes tr at 24, lines 6-10). Mr. Schwartz also suggested that the bill needs additional affirmative defenses to protect a landlord's ability to do legitimate repairs and construction needed on a commercial property. (Minutes tr at 41, lines 2-6). Finally, the SBS raised concerns that 851-A conflicts with a landlord's current rights to reenter a property whether due to a breach of the lease, termination thereof, or when a tenant stops paying rent. (Minutes tr at 24, lines 20-24). We share those concerns.

DISCUSSION

Inasmuch as several provisions of the bill purport to limit a building owner's rights with regard to use and occupancy of the space, the Committees will treat these provisions as the equivalent of rent control.[3] As discussed in greater detail below, courts have found that the City is not authorized to enact rent controls under the rubric of the general powers that it has with respect to its property, affairs or government of the City. The only possible basis for their validity is under the general "health and welfare" powers. Whether the power to enact legislation that mimics aspects of commercial rent control is within the City's general health and welfare power has not been specifically decided by the courts.

[3] Rent control is generally considered and assumed to be a statutory scheme which places limitations on the amount of rent that may be charged, the services that must be provided and requirements for leases to be renewed or extended, and may include other regulations regarding the tenancy, including restrictions on occupancy and subletting. Even if not all of the bill provisions amount to the technical equivalent of rent control, the bill should be reconsidered due to its overbreadth, vagueness, and arbitrary allowance of landlord affirmative defenses with respect to only two landlord-initiated activities.

Commercial rent control existed in the City from 1945 to 1963 pursuant to state law. These controls were upheld, as within the power of the State to enact in *Twentieth Century Ass'n v. Waldman,* 294 N.Y. 571, 582 (1945). State enforced commercial rent control expired on December 31, 1963 under a sunset provision in the state statute. Since commercial rent control was imposed in the State only under state legislation; no cases could have arisen specifically resolving the City's power. However, attempts by the City to enact residential rent control legislation under its "health and welfare" powers without explicit State authorization have been invalidated by the courts. As the interests of residential tenants as a class are much more closely related to "health and welfare" concerns of a local government than those of non-residential tenants as a class, the result in the residential area would seem to apply, *a fortiori*, to the commercial area.

Enactment of the bill would create a number of inconsistencies with existing provisions of the State's Real Property Law. While courts have permitted city laws to remain in effect when such laws were somewhat inconsistent with state laws addressing minor state interests, they have generally invalidated city laws that were inconsistent with state laws addressing significant state interests. Although the courts have not firmly established a bright line test as to which types of inconsistencies are impermissible, the inconsistencies between the proposed legislation and existing state Real Property Law are so substantial and involve such a significant state interest that commercial rent control laws enacted by the City would likely be invalidated. Thus, the City lacks power to enact commercial rent controls by local law.

A. State Law Does Not Expressly Delegate to the City the Power to Enact Commercial Rent Control

Inasmuch as the City has no inherent sovereign power, but rather governs as an agency of the State, authority for the City to legislate in a given area must be found either in the State Constitution, the Municipal Home Rule Law or an enabling statute. *LaGuardia v. Smith*, 288 N.Y. 1, 7 (1942). The State has not expressly delegated to the City by the State Constitution, the Municipal Home Rule Law, or an enabling statute, the power to enact commercial rent control. Thus, to the extent that any provisions of the bill are deemed to constitute commercial rent control, they would not be permitted.

B. The Power to Enact Commercial Rent Control Cannot Be Supported Under Inherent City Powers to Enact Legislation Concerning Its Property, Affairs or Government

The Municipal Home Rule Law, in conjunction with Article Nine of the State Constitution, set the parameters of State delegation of legislative power to the City. Under the Home Rule Law, the City has broad powers to enact laws relative to its own "property, affairs or government" which cannot be infringed upon by the State except by general law or constitution. N.Y. Municipal Home Rule Law §10(1)(ii). In addition, the City also has a general power to enact health and welfare legislation. *Id.* at § 10(1)(ii)(a)(12).

Local government powers in the health and welfare area are, however, subject to greater State control than are a locality's powers in the area of its property, affairs and government, since

health and welfare powers can be constrained by special State laws pertaining solely to a single local government. *Id.* at § 10(1)(ii). Further, local government powers under the "property, affairs or government" provisions of the Municipal Home Rule Law are construed narrowly. *See Adler v. Deegan*, 251 N.Y. 467, 472 (1929).

In particular, the courts have ruled that the subject of rent control is one in which the "local laws must remain consistent with State statutes since rent control is primarily a matter of State concern." *City of New York v. State of New York*, 67 Misc.2d 513, 514 (Sup. Ct. N.Y. Co. 1971), aff'd, 31 N.Y. 2d 804 (1972). In *City of New York v. State of New York*, the City sued the State to invalidate the Vacancy Decontrol Law of 1971, claiming that rent control was within the City's more expansive home rule powers. 67 *Misc.* 2d at 514. The Court ruled that rent control was a matter of State concern that was not within the City's "property, affairs and government" powers. *Id.* at 514.

In *241 E. 22nd Street v. City Rent Agency*, 33 N.Y.2d 134 (1973) and *210 E. 68th Street v. City Rent Agency*, 76 Misc. 2d 425, (Sup. Ct. N.Y. Co. 1973), *aff'd*, 34 N.Y.2d 560 (1974), the Court of Appeals made clear that the enactment of rent control legislation was not within the power of the City. In *241 E. 22nd Street*, the Court of Appeals upheld a State law that gave the State Housing Commissioner veto power over City rent regulations that were more restrictive than those State provisions previously in force. In *210 E. 68th Street*, the Court declared constitutional a State law prohibiting enactment by the City of more stringent regulation than the State provision already in effect, and also invalidated Local Law 24 of 1973, which gave the City Council authority to repeal certain State law provisions governing rent increases.

Based upon uniform case law and narrow construction of local government powers in the areas of its "property, affairs or government," rent control cannot be considered a matter within the City's more expansive home rule powers. Thus, authority for local legislation establishing commercial rent control would have to be supported, if at all, by the City's general health and welfare powers.

C. The Power to Enact Rent Controls Cannot Be Supported By General City Health and Welfare Powers

Local governments have a general mandate under Article Nine of the State Constitution and the Municipal Home Rule Law to enact health and welfare legislation. This power is subject to the limitation, however, that such laws not be (1) inconsistent with any general State law or constitutional provision, or (2) barred by any special State law restricting local legislative action. *See New York State Club Ass'n v. City of New York*, 69 N.Y.2d 211 (1987). These limitations have been repeatedly enforced by the courts on preemption grounds.

For example, in *Consolidated Edison Co. v. Town of Red Hook*, 60 N.Y.2d 99 (1983), a unanimous Court of Appeals struck down a local law that authorized a town board to require an applicant to a state sitting board for a license to build a power plant to have obtained a pre-application license from the town board before initiating the state-required site studies for power plant licensing. The Court stated:

> Inconsistency is not limited to cases of express conflict between State and local laws. (citation omitted). It has been found where local laws prohibit what would be permissible under State law (citations omitted), or impose "prerequisite 'additional restrictions'" on rights under State law (citation omitted), so as to inhibit the operation of the State's general laws. *Id.* at 108.

See also Wholesale Laundry Bd. v. City of New York, 12 N.Y.2d 998 (1962).

In addition to the State Constitution and the Municipal Home Rule Law, the City Charter also grants the City Council similar general health and welfare powers. These powers are to adopt local laws which are not inconsistent with the provisions of this charter or with the constitution or laws of the United States or of this state, for the good rule and government of the City; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the City and its inhabitants; and to effectuate the purposes and provisions of the charter or of the other laws relating to the City. City Charter § 28(a). This grant is silent, however, as to whether the Council has power to enact commercial rent control.

Although the State grant of health and welfare powers to the City contains no express bar to City rent control legislation, local rent control laws enacted other than in conformity with State enabling laws have been invalidated on the ground that the field is one of State concern. One case even invalidated City residential rent control legislation that was "substantially a re-enactment" of earlier State residential rent control laws which had expired. *Gennis v. Milano*, 135 Misc. 209, 211 (1st Dep't 1929). Thus, the absence of State regulation of commercial rents does not mean that the area is one in which the City is free to act.

In fact, rent control has historically been a matter of State interest. For example, in 1945 the Legislature moved to establish commercial rent controls in the City. 1945 N.Y. Laws 3. The following year, the State Legislature passed the Emergency Housing Rent Control Law. 1946 N.Y. Laws 274. Although commercial rent control expired in 1962, the Emergency Housing Rent Control Law and the Emergency Tenant Protection Act of 1974 (1974 N.Y. Laws 576) continue to control residential rents in the City. The existence of these State residential rent control laws, in conjunction with case law upholding State preeminence in the area of rent control, support the conclusion that local assertions of commercial rent control power are inherently invalid absent clear delegation of such power by the State.

Indeed, State residential rent control enactments have assumed pre-eminence in this area by previously granting the City the power to enact "regulation and control of residential rents." 1962 N.Y. Laws 21. The Legislature stated that "[t]he validity of any such local laws shall not be affected by and need not be consistent with ... the state emergency housing rent control law." *Id*. That it was deemed necessary for the State to grant authority to the City supports the lack of inherent local authority. Furthermore, the Legislature's emphasis upon the need for consistency with State rent control laws also indicates that State interests in this area are otherwise paramount.

In *Gennis v. Milano*, 135 Misc. 209 (App. T. 1st Dep't 1929), the Court struck down a New York City ordinance allowing residential tenants to assert a defense of unreasonable rent to an action for eviction. Despite the State's grant by Home Rule Law then in effect to the City of power to enact health and welfare legislation, the Court found that the local law conflicted with the State law of summary proceedings, finding that relationships between landlord and tenant, as well as the operation of summary proceedings, were a matter of "exclusively State concern." *Id.* at 212. The Court's decision is also significant because the City legislation was enacted after the expiration of State rent control. Thus, the fact that the State had once regulated in an area, but allowed that regulatory scheme to expire, does not constrain a court from invalidating subsequent local legislation as inconsistent with State Law.

The question of when a local law is inconsistent with a State law has not been resolved by a clear test. Nevertheless, courts have invalidated local legislation that adds additional requirements to an existing regulatory framework. Inconsistencies between State and local law have been found in three instances: (1) where a locality imposed additional procedural restrictions upon State rights, *F.T.B. Realty Corp. v. Goodman*, 300 N.Y. 140, 147 (1949); (2) where a locality established a parallel regulatory system for licensing businesses which could potentially deny licensing to businesses already licensed by the State, *S.H. Kress* & Co. *v. Dep't of Health*, 283 N.Y. 55, 58 (1940); or (3) where a locality supplemented an existing State legislation by altering the substantive elements of a State created substantive right. *Wholesale Laundry Bd. v. City of New York.* 17 A.D.2d 327 (1st Dept. 1963), *aff'd* 12 N.Y.2d 998 (1963).

In *F.T.B. Realty Corp.*, a landlord challenged the "Sharkey Law", which set residential rent limits and established a regulatory system requiring application before a City rent commission before eviction proceedings could occur. 300 N.Y. at 145-146. The Court of Appeals struck down the law as inconsistent with State law governing summary proceedings because it added "additional restrictions" upon the rights granted landlords under the then-existing Civil Practice Act. *ld.* at 148. Although *F.T.B. Realty Corp.* does not discuss in detail the exact inconsistencies the court found between State and City law, the decision suggests that a locality may not add either substantive or procedural requirements to a State-created right. Thus, the City could not require landlords to petition a City rent commission for a discretionary eviction certificate or make eviction for non-payment of rent contingent upon the commission's certification that the rent charged was within the limits proscribed by law. The court found that these requirements were inconsistent with what was then Article 83 of the Civil Practice Act governing summary proceedings.

Similarly, in *Tartaglia v. McLaughlin*, 190 Misc. 266 (Sup. Ct. Kings Co. 1947), *aff'd* 273 A.D. 821, *rev'd on other grounds* 297 N.Y. 419 (1948), the Court struck down Local Law 66 of 1947, which required a residential landlord to obtain an certificate of eviction before instituting court eviction proceedings. The Court found that the eviction certificate requirement abrogated State power to determine the functions and organization of its courts. *Id*. at 270.[4]

[4] After the State Legislature later passed a statute validating Local Law 66, which had been previously declared invalid in *Tartaglia*, 1948 N.Y. Laws 4, Local Law 66 was upheld in subsequent challenge. *Molnar v. Curtin*, 273 A.D. 322 (1st Dep't 1948), aff'd, 297 N.Y. 967 (1948). The court noted that "[u]ndoubtedly the State, and the City of New York *when granted power by the State*, can under the police power adopt legislation of the kind herein involved." 273 A.D. at 325 *Id.* (emphasis added).

In 1971, the City challenged State enactment of the Vacancy Decontrol Act of 1971, which removed local authority to apply rent control to decontrolled apartments. *City of New York v. State of New York*, 67 Misc. 2d 513 (Sup. Ct. N.Y. Co, 1971), *aff'd* 31 N.Y.2d 804 (1972). The Court held that the City had no authority to challenge a diminution of its power to impose rent controls since this area was "primarily a matter of State concern." *Id.* at 514. More recently, in *Haque v. Pocchia*, 186 Misc.2d 806 (App. T. 2d Dep't 2000), the Court invalidated a City statute requiring the owner of a one or two family house who does not live within the City to register with the City because that requirement restricted the owner's right to maintain a summary proceeding and recover a judgment for rent in accordance with State law.

Thus, although the City has a general power to enact health and welfare legislation, courts have found rent controls to be outside of this power on various grounds, including conflicts with State control over the functions of courts and real property law in general, and because the State has traditionally occupied the field of landlord-tenant relations.

D. The Proposed Bill is Inconsistent with Certain State Laws

As discussed above, the general power of local governments to enact legislation in the health and welfare area is subject to the limitation that the local legislation not be (1) inconsistent with any general State law or the State Constitution; or (2) specifically prohibited by State law. *People v. Cook*. 34 N.Y.2d 100, 105-106 (1974). The bill, however, purports to create several new substantive rights for non-residential tenants not now existing under State law that may either conflict with, or be prohibited by, other laws.

For example, the bill would create rights to a lease extension or renewal (which may amount to rent control, an area pre-empted by the State) without the payment of "an unreasonable sum," which is not defined. The bill would also create statutory rights that conflict with notions of private property generally: by creating a right to access to the landlord's building for not only the tenant, but also to a tenant's invitee (who may be a subtenant that landlord did not approve); and by giving a tenant the right to limit or delay a landlord's right to repair and improve its property if it or an adjoining property owned by the same landlord has non-residential tenants. Additionally, the bill is inconsistent with other legal rights that a landlord may have with regard to a tenant's property (*e.g.*, because of a security interest or legal right to levy against the property).

In addition, the bill would establish a right to lease renewal which contravenes the rights of commercial landlords under Real Prop. Law § 228 to terminate tenancies at will within 30 days and re-enter, and under Real Prop. Law § 232-a to terminate month-to-month tenancies on 30 days' notice. Furthermore, the lease renewal right conflicts with Real Prop. Law §229, which provides for the recovery by Landlord of double rent from holdover tenants. Requiring that landlords negotiate renewals conflicts with the termination rights of landlords and thwarts contractual relationships between landlords and tenants.

The bill would also create a right to damages for harassment by the nonrenewal of a commercial lease which right also conflicts with State law. Real Prop. Law § 235-d(2) now proscribes harassment but explicitly excludes the refusal to renew a lease as a form of

harassment. Even though such law explicitly permits conflicting local law (*Id.* at § 235-d (5)), it does so only for existing local laws and amendments thereof, but not for new local laws. Thus, provisions of the bill expressly conflict with State law.

For all of the above reasons, the Committees oppose the bill.

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