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The City of Seattle

Ordinance

Council Bill

An ordinance relating to commercial tenancies; establishing lessor requirements to provide transparency regarding access to the lease agreement, previous certificate of occupancy for the space, the existing conditions of the space, and triple net expenses; and amending Sections 6.104.020, 6.104.030, 6.104.060, 6.104.070, and 6.104.080 of the Seattle Municipal Code.

Recitals:

The Washington Constitution provides in Article XI, Section 11 that "[a]ny city, county, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws."

Owners of small businesses are less likely than owners of large businesses to own the properties from which those businesses are conducted, thus any requirements that affect commercial lease agreements will impact small businesses to a greater extent than they will impact large businesses.

The Office of Economic Development's 2023 "Future of the Seattle Economy" report reflects a community-informed investment agenda that will promote inclusive economic growth, especially for communities that have systematically been excluded from such opportunities,

and its findings identified the need to help women- and minority-owned business enterprises (WMBEs) and small business enterprises (SBEs).

The Office of Economic Development has encountered recurring issues in its efforts to support small businesses negotiate lease agreements and resolve tenant-landlord disputes, which include small businesses unable to acquire a copy of their lease, misunderstanding the allowed use of the space, discovering faulty conditions or inadequate utilities only after signing a lease, and being subject to substantial increases in triple net expenses with limited understanding about how the costs are incurred by the lessor or calculated for the leased space.

The recurring issues the Office of Economic Development and business owners have identified have resulted in businesses incurring significant costs and delays, extended vacancies, and businesses failing before ever opening.

This ordinance is based on direct experience working with hundreds of small businesses and builds on the Office of Economic Development's efforts to support WMBEs and SBEs, who staff from the Office of Economic Development have observed as being disproportionately impacted by the transparency issues identified.

This ordinance will help ensure businesses have the relevant information to make an informed decision before signing a lease, reducing commercial vacancies and unexpected, costly, and time-intensive tenant improvements and permitting processes. Therefore,

Be it ordained by The City of Seattle as follows:

Section 1. The City Council finds and declares:

A. In the exercise of The City of Seattle's (City's) police powers, the City is granted authority to pass regulations designed to protect and promote public health, safety, and welfare. This ordinance protects and promotes the public welfare by requiring lessors provide: a copy of the lease to the tenant at the time of execution of the lease; a copy of the lease one additional time during the lease term at the tenant's request; the most recent certificate of occupancy, if available; information about the existing conditions of the commercial space to the best of their knowledge; the previous

year's triple net expenses and an estimate of triple net expenses for the first year of the lease; and annual access to documentation of the invoices or other materials documenting the actual costs incurred to the lessor that are charged to the tenant as triple net expenses.

B. Small businesses are vital to the character and community fabric of Seattle, reflecting and nurturing the cultural diversity of the community and serving as important engines of the local economy by providing jobs and operating as commercial anchors in neighborhoods across Seattle.

C. Many small business owners do not own the property from which they conduct their business, requiring them to execute a lease with a lessor.

D. Small business owners report that they sometimes do not have access to the information needed to make an informed decision whether to enter into a lease agreement, which can result in significant costs and delays, extended vacancies, and businesses failing before ever opening.

E. A 2024 policy review conducted by Montgomery County, Maryland identified seven states and three cities that regulate commercial lease agreements or certain lessor actions, establishing that other governments have identified a need to address similar issues.

F. Establishing the requirements in this ordinance is consistent with the Future of Seattle Economy framework's efforts to support women- and minority-owned business enterprises and small business enterprises, as staff from the Office of Economic Development have observed these groups being disproportionately impacted by the transparency issues identified.

G. It is in the public's interest to take actions to reduce commercial vacancies, improve success rates for small businesses, and promote neighborhood vibrancy.

H. This ordinance protects and promotes public health, safety, and welfare by increasing transparency in commercial tenancies, which will help ensure successful outcomes for both tenants and lessors.

I. It is in the public's interest to apply these requirements on all commercial leases, rather than limit its scope to certain landlords or tenants, to ensure all commercial leases meet these standards and to avoid disincentivizing landlords renting to the businesses that would be subject to these requirements or incentivizing smaller landlords to sell their properties to larger organizations.

J. It is the intent of the City to ensure transparency of reasonably available information through passage of this ordinance, and not to establish new guarantee or warranty requirements on commercial landlords.

K. The City recognizes that the commercial real estate industry, including but not limited to developers, landlords, and property managers provide a crucial service by creating and maintaining the commercial buildings that are needed for the local economy and that most landlords currently follow industry best practices and provide the information this legislation would require.

L. The City intends to coordinate with small businesses, commercial landlords, industry organizations, and other key stakeholders to develop rules, guidance, education materials, and other implementation details to minimize the burden on commercial landlords who currently implement industry best practices.

Section 2. Section 6.104.020 of the Seattle Municipal Code, enacted by Ordinance 126982, is amended as follows:

6.104.020 Definitions

For the purposes of this Chapter 6.104:

* * *

"Director" means the Director of Finance and Administrative Services, or successor entity, or the Director's designee.

“Disclosure form” means a form describing existing conditions, attached to a commercial lease agreement and signed by the lessor and tenant pursuant to subsection 6.104.030.G.

“Existing conditions” means the material conditions of the leased space, including but not limited to the conditions and operability of the floor, wall, ceilings, roof, doors, security system, plumbing capacity and infrastructure, electrical capacity and infrastructure, heating, cooling, exhaust ventilation, and sprinkler systems, and other conditions as established by rules issued by the Office of Economic Development.

* * *

“Triple net expenses” mean monthly or periodic fees charged to a tenant by a landlord in addition to the base rent for expenses incurred by the landlord for building operating expenses, including but not limited to:

1. Common area maintenance;

2. Taxes;

3. Assessments;

4. Insurance; and

5. Utilities.

Section 3. Section 6.104.030 of the Seattle Municipal Code, enacted by Ordinance 126982, is amended as follows:

6.104.030 General ((~~Provisions~~)) <u>provisions</u>

All lessors of commercial premises involved in promoting or executing lease agreements for commercial properties within Seattle shall comply with the following:

A. For any new lease executed after January 29, 2024, the total value of any required security deposit and/or letters of credit shall not exceed the total value of the first month and last month of base rent.

B. For any new lease executed after January 29, 2024, the maximum personal guaranty that may be included in a commercial lease or in a separate agreement upon which a commercial lease is conditioned is the sum of (1) the first two years of base rent payments and (2) the total cost of tenant improvements made to the leased space, inclusive of tenant improvement allowance, if any; and exclusive of tenant improvement costs borne by the tenant, if any.

<u>C. For any lease executed after July 1, 2027, the lessor shall provide at least one copy of the signed lease to the tenant at the time of the execution of the lease.</u>

<u>D. For any lease executed after July 1, 2027, the lessor shall, upon the tenant's request, provide at least one additional copy of the lease, including all relevant attachments, either electronically or in hard copy, once during the term of the lease.</u>

<u>E. For any lease executed after July 1, 2027, the lessor shall include, if available, a copy of the most recently issued certificate of occupancy for the leased space, as an attachment to the lease. Copies of certificates of occupancy are kept by the Seattle Department of Construction and Inspections (SDCI). The lessor shall not be held liable for failure to produce the certificate of occupancy if a certificate has not been previously issued for the space or the certificate is not reasonably available on a publicly accessible City database or provided to the lessor in a timely manner. Lessors shall be permitted to rely on SDCI's determination of whether a certificate of occupancy applies to a leased space, and lessors shall not be required to independently verify whether the certificate of occupancy furnished by SDCI is the most recent certificate or is valid for the leased space. This subsection 6.104.030.E does not apply to leases for tenants already occupying the space.</u>

<u>F. For any lease executed after July 1, 2027, the lessor must provide to tenants, upon their request, annual access to the invoices or other materials documenting the actual building operating expenses incurred to the lessor that are charged to the tenant as triple net expenses.</u>

G. Any lease executed after July 1, 2027 shall include as an attachment to the lease a complete existing conditions disclosure form signed by the lessor and tenant.

1. The Office of Economic Development shall create and distribute a model existing conditions disclosure form in English, Spanish, and other languages by March 31, 2027.

2. The lessor shall either attach the model form or an equivalent form that contains all of the information included in the model form.

3. The disclosures made in the disclosure form shall be based on the lessor's actual knowledge of the space at the time the lessor completes the form.

4. The information provided on the disclosure form is for disclosure only and is not a warranty of any kind by the lessor or by any agent representing the lessor.

5. The disclosure form does not supersede provisions in a lease agreement that a tenant accepts the conditions of the premises.

6. This subsection 6.104.030.G does not apply to leases for tenants already occupying the space.

H. Any lease executed after July 1, 2027 under which the tenant is charged for triple net expenses shall include as an attachment to the lease a statement signed by the lessor and tenant that the lessor has provided and the tenant has received documentation of the triple net expenses for the leased space from the previous year, if available, and an estimate of triple net expenses for the first year of the lease.

Section 4. Section 6.104.060 of the Seattle Municipal Code, enacted by Ordinance 126982, is amended as follows:

6.104.060 Enforcement and rulemaking powers and duties

A. The Director shall adopt rules pursuant to Chapter 3.02 to implement the provisions of ((~~this Chapter 6.104~~)) subsection 6.104.030.A, 6.104.030.B, 6.104.040, 6.104.050, 6.104.070.A,

6.104.070.B, 6.104.080, and 6.104.090. The Director may promulgate, revise, or rescind rules deemed necessary, appropriate, or convenient to administer the provisions of ((~~this Chapter 6.104~~)) subsection 6.104.030.A, 6.104.030.B, 6.104.040, 6.104.050, 6.104.070.A, 6.104.070.B, 6.104.080, and 6.104.090, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 6.104.

B. The Office of Economic Development shall adopt rules pursuant to Chapter 3.02 to implement the provisions of subsections 6.104.030.C through 6.104.030.H and 6.104.070.C through 6.104.070.H. The Office of Economic Development may promulgate, revise, or rescind rules deemed necessary, appropriate, or convenient to administer the provisions of subsections 6.104.030.C through 6.104.030.H and 6.104.070.C through 6.104.070.H, providing affected entities with due process of law and in conformity with the intent and purpose of this Chapter 6.104.

((~~B~~))C. The Director is authorized to investigate any potential violation of ((~~this Chapter 6.104~~)) subsection 6.104.070.A or 6.104.070.B.

((~~C~~))D. Any violations of ((~~this Chapter 6.104~~)) subsection 6.104.070.A or 6.104.070.B shall be enforced under the citation provisions set forth in Section 6.104.080.

Section 5. Section 6.104.070 of the Seattle Municipal Code, enacted by Ordinance 126982, is amended as follows:

6.104.070 Violations

It is a violation of this Chapter 6.104 for any commercial lessor to:

A. Enter into, or require another party to enter into, any commercial lease in which the total value of any required security deposit and/or letters of credit exceeds the total value of the first month and last month of base rent.

B. Enter into, or require another party to enter into, any commercial lease agreement that includes or is conditional upon personal guaranty that exceeds the sum of: (1) the first two years of

base rent payments; and (2) the total cost of tenant improvements made to the leased space, inclusive of tenant improvement allowance, if any; and exclusive of tenant improvement costs borne by the tenant, if any.

C. Enter into, or require another party to enter into, any commercial lease agreement that does not include, attached to the lease, the tenant's signed acknowledgment of receiving a copy of the lease at the time of execution of the lease.

D. Fail to provide a copy of the commercial lease agreement to the tenant within 30 days of the tenant's first request during the term of the commercial lease agreement.

E. Enter into, or require another party to enter into, any commercial lease agreement that does not include as an attachment to the lease a copy of the most recently issued certificate of occupancy, if available.

F. Fail to provide documentation of the triple net expenses incurred for the leased space within 30 days of the tenant's request each year of the commercial lease agreement if the tenant is being charged for triple net expenses. Lessors are permitted an additional 90 days if the tenant's request occurs within 120 days of the end of the lessor's fiscal year to allow the lessor to prepare and provide final annual statements as documentation of the triple net expenses, rather than the information available at the time of the tenant's request.

G. Enter into, or require another party to enter into, any commercial lease agreement that does not include, attached to the lease, an existing conditions disclosure form, as published by the Department, signed by the lessor and tenant. The lessor shall not be held liable for a tenant's failure to sign the disclosure form if the tenant is provided a copy of the document and refuses or fails to sign it.

H. Enter into, or require another party to enter into, any commercial lease agreement under which the tenant is charged for triple net expenses, that does not include a statement signed by the

lessor and tenant that the lessor has provided and the tenant has received documentation of the triple net expenses for the leased space from the previous year, if available, and an estimate of triple net expenses for the first year of the commercial lease agreement. The lessor shall not be held liable for a tenant's failure to sign the statement if the tenant is provided a copy of the statement and refuses or fails to sign it.

Section 6. Section 6.104.080 of the Seattle Municipal Code, enacted by Ordinance 126982, is amended as follows:

6.104.080 Citation

A. If, after investigation, the Director determines that a lessor has committed a violation of ((~~this Chapter 6.104~~)) subsection 6.104.070.A or 6.104.070.B, the Director may issue a citation to the person responsible for the violation. The citation shall include the following information:

1. The name and address of the responsible person to whom the citation is issued;

2. The complete address of the commercial property subject to the commercial lease violation;

3. A separate statement of each violation;

4. The date of the violation;

5. A statement that the person cited must respond to the citation within 15 business days after the date of service;

6. A space for entry of the applicable penalty;

7. A statement that the response must be sent to the Hearing Examiner and received not later than 5 p.m. on the day the response is due;

8. The name, address, and phone number of the Hearing Examiner where the citation is to filed;

9. A statement that the citation represents a determination that a violation has been

committed by the responsible person named in the citation and that the determination shall be final unless contested as provided in subsection 6.104.080.C; and

10. A certified statement of the inspector issuing the citation, authorized by RCW 5.50.050, setting forth facts supporting issuance of the citation.

* * *

F. Citation penalties

1. The following penalties shall be assessed for any violations of ((~~this Chapter 6.104~~)) subsection 6.104.070.A or 6.104.070.B:

a. $500 for the first violation; and

b. $1000 for each subsequent violation within a five-year period.

2. The Director may, in an exercise of discretion, issue a warning to the person responsible for the violation if that person has not been previously warned or cited for violating ((~~this Chapter 6.104~~)) subsection 6.104.070.A or 6.104.070.B.

3. Each party responsible for a violation of subsection 6.104.070.A or 6.104.070.B can be assessed a separate penalty for that violation.

4. If the person cited fails to pay a penalty imposed pursuant to this Section 6.104.080, the penalty may be referred to a collection agency. The cost to the City for the collection services will be assessed as costs, at the rate agreed to between the City and the collection agency, and added to the penalty. Alternatively, the City may pursue collection in any other manner allowed by law.

5. Each day a person commits a violation under ((~~Section 6.104.070~~)) subsection 6.104.070.A or 6.104.070.B may be considered a separate violation for which a civil citation may be issued.

This ordinance shall take effect as provided by Seattle Municipal Code Sections 1.04.020 and 1.04.070.

Passed by the City Council and signed in open session in authentication of its passage on .

President of the City Council
on .

Katie B. Wilson, Mayor

Attested on .

Scheereen Dedman, City Clerk

Seal

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