

New Commercial Lease Restrictions in the City of Seattle

Legal Alert
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In the last month of the most progressive Seattle City Council term in recent history, the Council passed an ordinance restricting a landlord's right to use certain security measures for commercial leases in the City. Ordinance 126982, which became law December 28, 2023, sets limits on a lease guarantor's maximum liability, the amount a landlord can require as a security deposit and/or letter of credit, and adds a new Chapter 6.104 to the Seattle Municipal Code.

Over the years, and especially during the recent pandemic, the City Council has passed a number of limitations on the rights of residential landlords, but this ordinance is one of the first forays into the contract rights of parties to commercial leases in Seattle. The goal of the ordinance is to encourage small business growth by limiting the potential guarantor exposure of tenant owners. While it's still unclear whether it will achieve the stated goals, the new ordinance represents another extension of government regulation of market forces in the landlord-tenant context.

The Ordinance sets these specific limits:

1.
 1. **SECURITY DEPOSITS/LETTERS OF CREDIT.** For any new lease, the total value of any required security deposit and/or letters of credit cannot exceed the total value of the first month and last month of base rent (as defined in the SMC Section 6.104.020.)
 2. **PERSONAL GUARANTIES.** For any new lease, the maximum personal guaranty that may be included in or relates to a commercial lease is the sum of (1) the first two years of base rent payments and (2) the total landlord cost of tenant improvements made to the leased space.

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The Ordinance also directs the City to prepare a summary of the new limitations and requires landlords to distribute the summary to all of its commercial tenants. Because the Ordinance was just passed, this summary has not yet been published. (If you're interested in receiving it once it is released, please contact Rob Spitzer at rob.spitzer@foster.com.)

The Ordinance also includes an enforcement mechanism whereby the City can issue citations to landlords and impose fines of \$500 for a first violation, and \$1,000 for each subsequent violation. SMC Section 6.104.080(F)(5) also provides, "Each day a person commits a violation [of the guaranty and security limitations] may be considered a separate violation for which a civil citation may be issued." Given that the conduct prohibited is to "enter into" a prohibited lease or require a prohibited guaranty, this doesn't seem to be something that would be repeatable, but the Council surely intended to require prompt compliance by that language.

The Ordinance also creates a private right of action for a tenant. This legislation and its impact will also be reviewed by the City in 2026.

ANALYSIS

Fortunately, the limitations imposed are pretty close to what the market requires (with security deposits) or what courts will allow a landlord to recover if an action is brought on a lease guaranty where the tenant vacates. Courts will sometimes cap a guarantor's obligation to pay future rent on vacant space at 18 months, as the landlord has the countervailing obligation to mitigate damages by re-renting the vacant space.

The City Council's desire to step in to alter market forces that have worked fairly well for centuries in connection with commercial lease arrangements is likely to bring unintended consequences. Perhaps landlords will more closely scrutinize the finances of the tenant itself instead of relying on a guaranty or L/C for security, which will make it less likely that the tenant will be able to enter into a lease, thus damaging a "disadvantaged" business owner's prospect of qualifying for a lease.

PRACTICE TIP

Commercial landlords may wish to add language such as the following to their lease and guaranty forms which are used throughout the Seattle metropolitan area: "In the event any of the financial requirements in this Lease or in any required Guaranty violate any law or exceed the amounts permitted by law, the parties agree that such violation shall not invalidate the entire Lease or Guaranty, and the Tenant and/or Guarantor shall be liable for only such amounts as are permitted by law."

If you have questions or need assistance in responding to a violation, please contact [Rob Spitzer](#) or any member of Foster Garvey's [Real Estate, Land Use & Environmental team](#).