



The Lease Handbook: Protecting Your Small Business

City of Somerville, MA

Prepared in collaboration with the
Metropolitan Area Planning Council

2025



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Welcome

Welcome to Somerville, Massachusetts. Whether you are interested in starting a business in our city, you own or operate a business here and want to renew your lease or sign a lease in a new space, or you want to learn more about leasing commercial property, this Handbook is for you. Small enterprises are the soul of Somerville's iconic squares and neighborhoods that make the city such an attractive place to be. The Economic Development Division of the Mayor's Office of Strategic Planning and Community Development is happy to assist through the permitting process and answer any question you may have. Thank you for your contribution to Somerville.

Purpose of The Lease Handbook

This Handbook is a tool for small business owners in Somerville to learn about commercial leases, how to negotiate a lease with a landlord, and the support available to business owners and entrepreneurs. Somerville's creative, diverse, and vibrant character is shaped by the small businesses that make up our community, and we at the Somerville Economic Development Division are here to support your success.

The goal of this Handbook is to empower small business owners with the information and resources needed to advocate for themselves and their businesses, and ultimately, to continue doing business in Somerville long-term. Small businesses are important to the City of Somerville, and we want you to succeed.



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Key Insights of The Lease Handbook

1. Protect your business with a lease. It's important to have a lease!
2. Read your lease carefully before signing it.
3. Ask for a second review from a lawyer or trusted partner before signing a lease.
4. Have insurance for your space and possessions.
5. Once you sign a lease, you've locked in your rights and limitations. Read on to learn more!



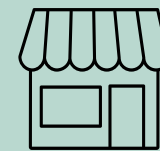
Legal Disclaimer

The information in this Handbook provides a general overview of commercial leasing issues. The information is not guaranteed to be up to date. The Handbook is for general information only and is not intended to provide legal advice. Readers are encouraged to seek legal advice from a licensed Massachusetts attorney who is experienced in commercial lease negotiations and tenant disputes when negotiating a commercial lease.

Commercial Tenant Rights

Your rights as a commercial tenant in Massachusetts are almost entirely limited to what is written in your lease. Commercial tenants do not have the same rights as residential tenants in Massachusetts. For this reason, it is important to have a lease, and to make sure it works for you and your business. This Handbook provides initial guidance on commercial leasing but it is not a replacement for legal advice for your unique situation.

Tip From A Business Owner



This handbook includes “tips from business owners” from the local Somerville businesses that contributed to this Handbook. They provide practical advice for you and your business. Other business owners are great mentors; get to know them!

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1: Steps to Take Before Signing a Lease

There are many steps to setting up your business for success that should occur before you sign a lease for space. Whether you are a new entrepreneur or a seasoned business owner considering a new space, work to complete these steps.

1.1 Setting Up Your Business

Create a Business Entity

To protect yourself and your personal assets, avoid doing business in your personal name or as an individual. Massachusetts has many options for business structures that offer different levels of protection such as a Limited Liability Corporation (LLC). Consult an accountant or business attorney for advice on the best structure for your business. Creating a business entity includes completing the form at sec.state.ma.us/divisions/corporations/corporations.htm, filing for an Employer Identification Number (EIN) if needed at irs.gov/businesses/employer-identification-number, and filing for a Business Certificate in Somerville at somervillema.gov/departments/city-clerk. There are also helpful tips to set up a business entity on the state's website at mass.gov/info-details/starting-a-business-in-massachusetts.

Know Your Finances

Avoid problems in the future by making a strong business plan and considering the true costs of doing business. Costs of doing business can include expenses like rent and increases in rent over time, state and federal business taxes, corporate filing fees, product inventory, utilities, property taxes, insurance, support from contractors, fees for services from attorneys and accountants, and legal fees if you need to go to court. Businesses often have other pre-startup costs like permits, buildout, equipment purchases, and software licensing.

Tip From A Business Owner



Do the math of how much it will cost to operate your businesses for several years including rent payments, rent increases, merchandise, and all other additional expenses listed to know if this business will be financially feasible for you.

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1: Steps to Take Before Signing a Lease

Talk to a Business Support Organization (optional)

A local support organization can provide valuable feedback on your business plan and goals or help with things like understanding how long it will take for your business to generate revenue and how to market your business to the right people. (See section 6: Business Support Resources).

Research and Reach Out to Local Banks (optional)

You can ask business support organizations or other businesses for bank or credit union recommendations. Ask the bank what kinds of loans, support, and resources they have for small businesses like yours. You can also ask what types of business accounts they offer and what documentation they require to set up a business account.

1.2 Permits and Licenses

Businesses are required to have a variety of permits and licenses to operate. Permits and licenses protect the health and safety of staff and visitors in and around your business.

Plan Ahead for Your Permits and Licenses

It may take 6-9 months or longer for your business to obtain all necessary permits and licenses required to operate. This includes compiling information, creating a budget, working with contractors, and filling out applications. Start early and ask questions often.



Tip From A Business Owner

Permitting can take several months. Don't sign a lease and start paying rent before you know how long the permitting process will take, and how long your business can survive before it opens to customers.

Work with the City of Somerville

We're here to help! Before applying for any permit or license, you can contact economicdevelopment@somervillema.gov or call 311 (or 617-666-3311) and ask how to get started. City staff can explain the steps you will need to take before signing your lease and prepare you for the permitting and licensing process that will happen after you sign.

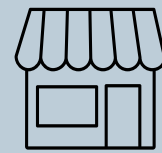
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1: Steps to Take Before Signing a Lease

Depending on your type of business and its physical location, different types of permits and licenses are required. The most common ones include:

- Sign or Awning License: for any sign or awning over a public space.
- Building Permit: for physical alterations to your space, such as to construct, repair, or demolish a structure or install a sign. Physical improvement permits must be submitted by your licensed contractor.
- Food Establishment License and Common Victuallers License: for restaurants.

Most permit and license applications are submitted through the CitizenServe online portal. Use this portal to submit applications, check their status, and renew permits and licenses as needed. While the City is here to help, YOU are responsible for ensuring your permits and licenses are progressing as planned. Check the status of your applications weekly on CitizenServe: somerillema.gov/citizenserve



Tip From A Business Owner

Before you sign a lease, talk to the City's permitting liaison to know which permits and licenses you will need, what you'll have to include in your application, and the timeline to expect - this will help you know how much time will pass before you can open your business to customers.

1.3 Finding the Right Space

Ensure Your Business Is Allowed to Operate in Your Desired Location

The City of Somerville can help you determine if your desired location is zoned* to allow your type of business. Contact the City of Somerville business assistance staff for help (see section 6: Business Support Resources for how to contact the right City of Somerville staff) and ask about the process for getting the right licenses and permits.

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1: Steps to Take Before Signing a Lease

Visit the Space in Person

Check the condition of the property for problems like water damage or electrical, plumbing, or structural issues. You may want to ask a contractor or other knowledgeable person to view the property with you. If you plan to renovate the space, updates may be necessary to meet current health and building codes. Discuss what support the landlord will provide to bring the property up to code and get their response in writing.

You can learn about the location by walking around the neighborhood and asking other business owners about things like traffic, street closures, crime, flooding, utility issues, rodents and pests, or any other issues to know before moving your business to the neighborhood.

Research Rental Rates and Potential Landlords (optional)

Established businesses in the area can share information about average rent costs, their relationships with their landlords, and challenges they've encountered. Ask other businesses if they know anything about your landlord. You can also research your landlord online to understand how many properties they own, who their other tenants are or used to be, or if the landlord has Health Department or permitting violations. You may have a different experience if your landlord is a local community property owner or a large corporate landowner.

After these steps, you will negotiate your lease with your landlord; the next sections of this Handbook provide guidance on how to successfully negotiate your lease.

Check out the City of Somerville's Full Guide to Doing Business in Somerville and learn more about permits and licenses at: somerillema.gov/departments/programs/doing-business-somerville



Tip From A Business Owner

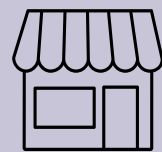
A lease assures business owners that their investment in a physical location for their business is protected. Without a lease, your business may not have the same long-term stability.

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2.1 Understanding Lease Negotiation

A lease is a legal agreement between your business and a landlord. It gives you the right to occupy the space and operate your business on their property. Negotiating a lease means talking through the details of your lease with your landlord before signing it so the final agreement properly describes the tenant's (your) and the landlord's rights and responsibilities during the term of the lease. Agreeing on clear lease terms will help you avoid issues during your tenancy.

Negotiating a lease is an opportunity to set up a good long-term relationship with your landlord. Tell the landlord your story: who you are, what your business is, and why your business will be an excellent asset for the landlord. Build a relationship by getting to know your landlord, whether the landlord is a local family or a larger corporate landowner. Listen to what kind of business or arrangement your landlord is looking for and what the landlord likes to do for the community.



Tip From A Business Owner

Ask lots of questions to your landlord and to the other people helping you before you sign, and don't be afraid of the paperwork or legalese. Don't let your excitement about a space let you sign a lease that is not right for you; if you feel something is not right, it's probably not.

Keep in Mind during Lease Negotiation:

- When signing your lease, sign it in the business's name rather than your personal name so you are not personally liable if issues arise.
- If you need translation help when negotiating your lease, ask your landlord to supply an interpreter. If your landlord can't provide one, ask the Somerville Office of Immigrant Affairs for recommendations on how to get support in your language.
- If you are renewing your lease, talk to your landlord about renewing at least six months before your lease ends. Remind your landlord that you have been a great tenant, and the financial benefit of keeping you as a tenant. If you do not plan to renew your lease, tell your landlord far in advance.
- If you want to change something about your lease, you can ask your landlord if they are willing to modify it and negotiate a "lease amendment." Landlords may be using

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a standard template that doesn't cover all the specific issues that affect the space and your business, or they may have worked with attorneys to draft a lease with provisions that are strongly favorable to the landlord.

- Ask questions to City of Somerville staff and to the landlord to determine whether the property and terms of the lease will meet the needs of your business. Make sure your business model does not depend on a use that is prohibited by zoning or by the lease.

Remember: Don't be pressured into signing something that doesn't work for you. If you are worried about the costs, the condition of the space, or anything else, or the landlord won't allow something that is common for businesses in the area, you do not have to sign a lease. You can look for a different location that is better for you and your business – request a Site Search through the City of Somerville SiteFinder at somerillema.gov/businesshelp

2.2 Tactics for Good Negotiation

Good communication with your landlord is critical to successful negotiation. Try to establish a positive working relationship with a landlord before you start negotiating a lease. Having a conversation with a potential landlord and asking a lot of questions will help you learn about the space and possibly identify red flags. You want to determine whether the space and the landlord are a good fit for your business, as well as show the landlord that you are a great business to be their tenant. For example, you can tell them that you have low machine use if they are worried about utility costs, or that you have experience operating a business somewhere else, or that many people in the community know you and will want to shop at your business.

Put all agreements in writing to protect both you and the landlord. Agreements made verbally cannot be used to support you if something goes wrong.

When negotiating your lease, ensure you and your landlord have the same understanding about your rights and obligations. Ask for clarification by saying something like, "When I read this part of the lease, I think it means [X]. Do you agree?" Put any changes or clarifications in writing. However, do not rely on the landlord if you are uncertain about the meaning of the terms of the lease. Seek advice from a knowledgeable attorney who is familiar with commercial real estate issues and can advise you about your unique situation.

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3: Key Elements to Negotiate

Below are some of the key elements to negotiate in a commercial lease. Make sure to discuss these with your landlord and write each component in your lease before you sign it to avoid issues during your tenancy. To avoid confusion, make sure items match up; for example, if waste removal is mentioned more than once, check that the requirements are the same each time. Each section includes a few example questions to ask a potential landlord.

Terms marked with an asterisk () are defined in section 7: Terms and Definitions on page 35 of this Handbook.*

3.1 Property, Existing Condition, and Tenant Improvement Allowance

Address of the property:

Make certain the address references a specific unit or location at the address.

Rentable square footage* of the property:

State all areas included in the leased space such as the first floor, a basement, parking, space around the building, or something else. Note any common areas shared with other tenants, and ensure you have access to the circuit breaker.

Physical condition of the property:

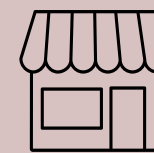
Include a general description of the physical condition of the property in the lease. When touring the space, check if the structure, including the roof, wall, and floors, and the mechanical, electrical, and plumbing systems (often called "MEP"*) are in good condition.

Ask about asbestos or other toxic materials and any prior uses of the property that involved hazardous substances and may affect the health and safety of staff and visitors to your business. You can request documentation of these issues from the landlord. Dealing with asbestos and other hazardous substances can cause delays to opening and add costs to renovating your space.

3: Key Elements to Negotiate

Negotiating improvements to the physical condition of the property:

If the space needs construction to be in good condition or if you conduct renovations that require you to make the space compliant with building codes, ask your landlord for tenant improvement allowance* (called "TIA") to pay for these improvements. Your landlord may provide TIA for changes that will stay in the space long-term. Determine – and include in the lease – if the landlord will make the changes, or if the tenant will make the changes and the landlord will reimburse the tenant. You can request to add an escape clause* to the lease to terminate the lease if the landlord doesn't make the changes that they promised before the tenant move-in date.



Tip From A Business Owner

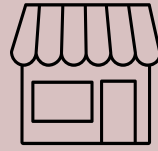
If the property is in a busy commercial area with almost no vacancies, it will be hard to get TIA from your landlord. It will be easier to negotiate for TIA in a less competitive area of the city.

If your lease states, "Tenant to accept the premise in its 'as is' condition" but the property is not in good condition, talk to your landlord about changing this statement and determine the next steps to fix the problems.

Example questions for the landlord:

- Have previous tenants had problems with the space? Have there been issues with a leaky roof or flooding in the basement?
- Can you fix the HVAC issues before I move in? If not, would you be willing to fully pay for or split the cost for me to fix the issues?
- Can I have rent abatement* (free or reduced rent cost) for 3-4 months at the start of the lease while I obtain permits and licenses and conduct the necessary Tenant Improvements* before opening to the public?
- What condition does the space need to be in when I eventually leave the space?

3: Key Elements to Negotiate



Tip From A Business Owner

Some improvements will trigger ADA (Americans with Disabilities Act) accessibility requirements from the City, so talk to the City's permitting liaison prior to starting any improvements or major fixes.

3.2 Lease Length or "Term" and Renewal Options

Start date, end or "expiration" date, and the length of the lease (such as "5 years"):

The length is often called the "term." You may have a different "effective date" or "delivery date" from when your lease starts to your "occupancy date" of when you can move in or "rent commencement date" of when you start paying rent.

Renewal options*:

You can negotiate terms for lease renewal in your original lease. For example, you can start with a 1- or 2-year lease term if you are a new entrepreneur and need flexibility to ensure that your business will work in that space. You can ask for the lease to include "options"* to extend the lease after the original lease ends. A more established business might want a longer lease term to start, and could ask for an option to extend it by 5 years, or even two 5-year renewal options. Include the timing and method of notice required to exercise the renewal option, such as the tenant telling the landlord in writing 9 months in advance if they want to exercise the renewal option.

If you have challenges opening:

An escape clause* in the lease allows you to leave the lease if you can't open your business due to complications such as permitting delays. An escape clause states the lease can be terminated if the tenant is not able to obtain the necessary licenses/permits to operate. Not all landlords will allow this. You can also ask the landlord to include a clause that they will act in good faith to support the permitting process, such as by providing site plans.

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Example questions for the landlord:

- Can the lease be longer or shorter? I'd like a X-year lease (fill in the X with your preferred length)
- Can my business have the option for a 5-year lease extension, so that I can stay in the space for at least 5 more years if my business does well in this location?
- If there are permitting issues that cause my business to not be able to open, can we terminate the lease? What would I have to do?

3.3 Acceptable Use

Uses of the property:

"Uses" are the activities the tenant will conduct in the space, such as eat-in and take-out dining or events. Write into the lease the ability to conduct related activities or sell similar products, and determine whether the landlord has to approve these related activities or products before you sell them. **Make sure the lease doesn't stop you from doing any of your intended or potential business functions.** The "uses" allowed in a location are determined by the city's zoning*, but the landlord may have additional use requirements.

Example questions for the landlord:

- For my dance studio business, can I add "other gatherings and events" to the list of approved uses, understanding that I will need to obtain the required permits to host those events?

3.4 Rent Payment, Increases, and Payment Process

Annual rent, the monthly payment, and upfront payments:

Specify in the lease the annual rent amount and monthly payments. Include other costs you may have to pay when you sign the lease such as the first month's rent, last month's rent, security deposit, or other payments that the landlord requires. Make sure you understand how rent is calculated and what other expenses you will be

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responsible for, such as utilities or property taxes. Look out for any language in the lease suggesting that your landlord may raise the rent for other reasons.

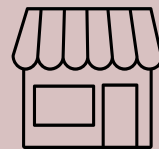
Where and how rent is paid:

Determine the payment method such as by check written out to a specific entity and mailed or delivered to a specific location, or by direct electronic payment (sometimes called “ACH” or “direct deposit”). **Remember to keep a record of all payments you make, and don’t pay in cash.** You can ask the landlord to confirm when they receive your payments.

Rent increases, or “escalations”:

Escalations are regular – usually annual – increases in rent. For example, you could have a 3% annual increase. Specify the exact rent amount for each year of the lease based on the percentage increase and the corresponding monthly payments. Knowing this exact increase and having it in writing in the lease will help you budget correctly.

Tip From A Business Owner



If you plan to stay in the space a long time, it could help to pay higher rent at the start and lower escalations over time; on the other hand, you don’t want too long of a lease in case your business doesn’t work out. Do the math of different upfront rent and escalation amounts, and talk to your landlord about your preference. Annual rent increases should be closer to 1-3%, not 10%!

Percentage leases:

Some leases are structured as a percentage lease*, meaning that you pay base rent and an additional rental fee that is a percentage of your annual revenue. For example, your rent could be a flat monthly rate plus an additional X% of profits if your business exceeds \$100,000 in annual revenue. If you have a percentage lease, your lease should state the annual gross revenue you need to exceed before you start paying a percentage of those profits, and what that percentage will be. A percentage lease should also state the base rent and annual escalations, just like a traditional lease.

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Example questions for the landlord:

- ❑ Could I pay higher rent the first year but have lower annual increases over time? (This may be helpful for businesses with long lease terms but less helpful for shorter leases; do the math to determine if this is good for your business!)
- ❑ Can I pay rent through X-method? (Fill in your preferred method of payment, and remember to never pay in cash!)

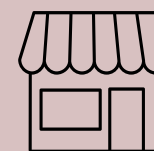
3.5 Additional Payments

Commercial leases may require tenants to pay costs besides rent. Many commercial leases are “triple net”* or NNN, meaning that aside from paying rent, the tenant pays fees like utilities, property taxes, building insurance, and operating and maintenance costs. These fees vary based on the property and lease agreement. Be sure your lease clearly states all your obligations in writing, how to pay, and how costs will be divided among other tenants, if any. Common additional payments include:

Utilities:

The lease should clearly state all utilities the tenant has to pay for, which may include water, electricity, gas, or others. It should specify whether each utility is separately metered for each tenant in the building, and if not, specify how those payments are divided among the tenants. Some utility companies may request an additional deposit when opening the account. Determine whether the tenant or the landlord is responsible for replacing utility items that break, like the water meter or gas equipment.

Tip From A Business Owner



If the lease lists a utility such as electric heating, check the space to ensure it works properly; if it doesn’t, ask the landlord to fix it prior to your lease starting.

Also, call the utility companies to ask how much the bill has been at this property in the past, so you know how much to budget for and in case you are overcharged.

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Property taxes:

If tenants are required to pay property taxes, the lease should specify what percent of the property tax is paid by the tenant, other tenants on the property, and the landlord, and how that percentage is calculated (such as square footage of each tenant's space); and how this payment should be made, if applicable.

Insurance:

The lease should specify all obligations of both the tenant and landlord for maintaining various insurance related to the property such as general public liability insurance and fire insurance. Leases often specify the minimum amount of insurance required, and the details of liability insurance coverage.

Tip From A Business Owner



To find a small business insurance broker, you can search online or ask for recommendations from other business owners. Ask what kinds of businesses they represent, how they can help you understand your insurance responsibilities, and if they speak a language that you prefer. Review your insurance every year to make sure you are paying an affordable premium rate and that you have full insurance coverage that meets your needs. Also ensure that any contractors who are working on your space have insurance, too.

Common area maintenance (CAM):

Common areas might include entryways, hallways, stairwells, or restrooms. A lease should specify the tenant's responsibility for common area maintenance fees, typically listed as a percentage of the cost. Identify all potential charges for things in a shared building like common space cleaning, landscaping, programming, routine and preventative maintenance, and other repairs. Make sure you understand how these costs are shared among tenants.

Sidewalk maintenance and cleaning:

Specify whether the tenant or landlord is responsible for snow and ice removal, or any other sidewalk maintenance required by the City of Somerville, and who pays for each of those functions. Ensure you follow City of Somerville snow and ice removal and sidewalk maintenance requirements. In addition, a lease may have other cleaning

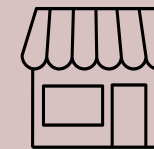
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requirements conducted by the tenant or landlord inside your business, in common areas, outside, or in the parking area.

Waste removal:

Specify when trash, recycling, and other waste such as grease from restaurants or compost has to be removed. Note who pays for removal and how it is removed (such as if it has to be taken to a certain location to be picked up or if removal costs and responsibilities are shared with other tenants). The City of Somerville requires that new businesses hire a licensed company for private trash collection and apply for a dumpster license through the CitizenServe online portal (see section 1.2: Permits and Licenses). You may check with the sanitation department if there are current recycling programs available for businesses.



Tip From A Business Owner

Call different waste removal companies to know which one is best for your business, and ask other businesses in your area for suggestions.

Pest control:

Determine and write in the lease if the tenant or landlord will conduct routine or emergency pest control services such as for rodents or insects, and who pays for that removal. You may want to ask if this is a frequent problem.

Security deposits and broker fees:

Sometimes, but not always, you may have to pay a security deposit or broker fees. Some landlords allow a payment plan for security deposits so that the tenant does not have to pay the full security deposit upfront; you can request this from your landlord during lease negotiation.

Example questions for the landlord:

- How is my water bill divided among the tenants on this property?
- How much are property taxes? (You can negotiate property tax payment or amount!)
- Are there any common area expenses?
- Will you conduct and pay for pest removal?

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Example questions for the landlord (continued):

- What insurance minimums or specific types of coverage do you require for the building? Can you clarify what your insurance covers and what mine should cover?
- Where can I store the dumpsters, and can they be separated from other tenants in the building?
- Do you remove snow and ice, or do other outdoor cleaning? How often?
- How do I get my security deposit back?

3.6 Space Improvements or Alterations

Changes to the property:

The landlord may allow changes like painting inside or outside or installing air conditioning. Determine and write in the lease whether the landlord has to approve those changes, whether the landlord or the tenant will conduct the changes, whether the landlord controls which contractors are used, whether the landlord or tenant will obtain the permits, and whether the landlord or tenant will pay for the changes. Physical changes to the storefront or facade will require site plan approval from the City of Somerville, as well as a building permit (see section 1.2: Permits and Licenses). Your eventual move-out may go more smoothly if you ensure the landlord gives permission for improvements or alterations to the space.

Example questions for the landlord:

- If I pay for permanent building updates like new windows, could I have X? (Fill in the X with a lease length, option, or something else you want to negotiate!)
- How is my water bill divided among the tenants on this property?
- If I want to paint the walls inside, do I need your permission? What about painting the trim on the facade?
- If I want to install air conditioning, will you pay for that?
- Will you work with your contractors on conducting space improvements, including the permitting?

The Lease Handbook: Protecting Your Small Business The information in this Handbook provides a general overview of commercial leasing issues. It is not intended to provide legal advice. Readers are encouraged to seek legal advice from a licensed Massachusetts attorney who is experienced in negotiating commercial leases.

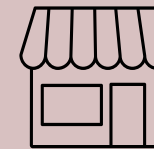
3: Key Elements to Negotiate

3.7 Repairs, Maintenance, and Emergencies

Property Maintenance of Repair:

Specify in the lease what happens when issues arise, like a leaky roof, broken heating system, cracked glass, broken water heater, broken meter, flooded basement, or other problems. Determine the landlord's and the tenant's responsibilities (or multiple tenants' shared responsibilities) for repairing and replacing critical items, including who pays for those repairs and the required timeline for completion. In addition, a lease should identify the process and timeline a tenant must follow when notifying the landlord of needed repairs and a timeline for the landlord's response (such as within 10 days).

Tip From A Business Owner



Make sure you have a good electrician, plumber, and other contractors who you trust to do quality work in a timely manner at a good price. You as the business owner usually have to fix problems instead of your landlord.

Routine maintenance:

Identify whether the landlord or tenant is responsible for routine maintenance, such as taking care of greenery around the building or cleaning the sidewalks and windows.

Construction that significantly interrupts the ability of the business to function:

A lease should address what happens if a landlord wants to do construction in or around the building that restricts the tenant's ability to do business. For example, the lease could allow for reduced rent or an option to end the lease early if the business cannot operate for 30 days during the landlord's construction.

What happens if there is an emergency like fire or flooding:

The lease should state what kind of insurance coverage is required, how and when the tenant has to notify the landlord of an emergency, and who conducts and pays for cleanup and repair of damages. Discuss what happens if the space is no longer usable after an emergency that isn't anyone's fault, like natural disasters; the lease may include a Force Majeure* clause to provide detail on what happens in cases like this.

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3: Key Elements to Negotiate

Example questions for the landlord:

- If the roof starts leaking, will you fix it and pay for it? How quickly will you fix it, and when will you notify me that you or a contractor is coming?
- If you are doing construction on the building that interrupts my business's ability to operate for 30 or more days, can I request to end the lease early? If it's shorter than 30 days, can I not pay rent during the time my business is unable to operate due to the construction?

3.8 Access

Entry by the landlord and required notice:

Leases often have a clause stating that the tenant has the right of quiet enjoyment* in the space without the landlord interfering. However, the landlord may need to enter the property during the lease for building inspections, emergencies, or to show the space to a potential future tenant. The lease can state how far in advance the landlord has to notify the tenant before the landlord enters the space.

Example questions for the landlord:

- Can you notify me 48 hours (2 days) in advance of you entering the space for all reasons besides emergencies? Can you notify me by X method? (Fill in your preferred method of notice, such as an email)
- Can you notify me two weeks (14 days) before you start showing the space to other potential tenants if I'm not renewing the lease?

3.9 Communication Between Landlord and Tenant

Method of communication:

Share contact information for routine and emergency situations, and identify the method of communication that the tenant and landlord agree to use for important, official business. This could be by mail sent to a specific address or by email. You can request your preference.

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3: Key Elements to Negotiate

USPS Certified Mail could be used for critical communications, like lease renewal requests or notices. Some landlords prefer UPS or FedEx overnight services for urgent legal matters. Text messages are hard to track, so keep copies of text messages with your landlord, and follow up on important text messages by mail or email.

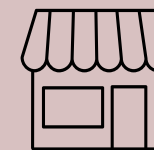
If the space is part of a Condo Association:

Ask the landlord to provide information on Condo Association documentation and communication processes that you may need to follow.

Example questions for the landlord:

- Can we communicate by (insert whatever written communication is best for you – as long as you save copies of what you send by mail, save emails, and follow up important text messages with emails)?

Tip From A Business Owner



Remember, all communications should be in writing. If you have a conversation by phone or in person, write it down and send it as an email or letter to your landlord recapping the conversation. Keep a copy of the email or mailed letter and any responses. Important text messages should also be sent by email, since text messages are harder to track if something goes wrong.

3.10 Late Payments

Process for late payments:

Specify in the lease the process, timeline, and fiscal responsibilities of the tenant and landlord when rent or other payments are late or overdue.

Example questions for the landlord:

- Will there be charges or interest applied to my rent for late payments?
- Is there a grace period for late payments? How soon after the due date is a payment considered late?
- How will you notify me if my rent is late or not received?

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3: Key Elements to Negotiate

3.11 Eviction

Process for eviction:

If the tenant doesn't pay rent or complete other responsibilities, the landlord may file with the court to evict the tenant. Specify in the lease the reasons the tenant may be evicted, and the process, timeline, and fiscal responsibilities of the tenant and the landlord (such as reimbursement of legal fees).

Example questions for the landlord:

- How would you notify me if you intended to evict my business?
- If you wanted to evict my business, what would be the process and timeline?
- What would be the reasons for you to evict my business?

3.12 Lease Renewal or Termination

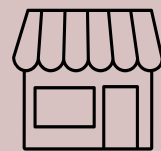
What happens when the lease is ending:

Determine the time by which the landlord has to notify the tenant about whether they will offer the lease for renewal after the lease term ends. Ideally, this would happen six months or longer before the lease ends. Specify the time by which the tenant has to notify the landlord that they want to either renew or terminate the lease. Specify whether there will be automatic renewal, or if renewal is not assumed.

What happens to the building when the lease ends:

Identify any requirements of the tenant for condition of the building when the tenant leaves, such as if the tenant must repaint everything to the original color, and what will happen if the tenant stays in the space after the lease ends (called "holding over"), which can include the landlord going to court to evict the tenant.

Tip From A Business Owner



Be proactive about telling your landlord far in advance whether you want to renew or terminate your lease. If you want to renew, think about any conditions that you want to negotiate before signing a new lease.

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3: Key Elements to Negotiate

Advertising to new tenants:

Determine whether the landlord is allowed to put signs on the windows advertising the space, when they are allowed to do that (such as 90 days prior to your lease ending), and what notice the landlord has to give the tenant before putting up signs.

Early lease termination or "surrendering":

If you want to leave a lease early, make sure you understand the requirements and options for breaking your lease – don't stop paying rent and don't leave the space without consulting a lawyer (see section 5: Finding Legal Support). You may consider subletting or assignment* as long as they are allowed as stated in the lease.

Subletting and assignment:

If you need to break your lease early, subletting or assignment* are potential opportunities as long as the lease states they are allowed. Determine and specify in the lease if the tenant is allowed to sublet all or part of the space to another tenant, or assign the lease to another tenant. Specify in the lease the process for subletting or assignment including whether the tenant or the landlord has to find the new tenant if you want to break your lease, and requirements of notice to the landlord about subletters or assignees and the activities of subletters or assignees. Clauses in a lease that allow subletting or assignment can state that the landlord's approval "will not be unreasonably withheld" to allow a subletter or assignee. If subletting or assignment* is allowed, the lease could include that you don't have to keep paying rent or other fees after the new tenant signs a lease.

Example questions for the landlord:

- Will you notify me at least 6 months in advance if my lease will be renewed or terminated, including if my business has to move? How will you notify me?
- If I want to leave the property early, can I sublet the space or assign the lease to someone else? Which one do you prefer?
- What is the process for getting approval to sublet or assign the lease?
- If I am not operating for some time, such as during the winter, can I sublet the space for that time?
- Can I sublet two chairs in my hair salon for a barber, as long as they have all the necessary certification and licenses?

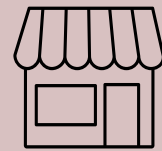
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3: Key Elements to Negotiate

3.13 Building or Ownership Changes

What happens when the landlord changes:

The landlord could transfer ownership to another landlord during the lease, the landlord could pass away, default on their mortgage, or the property could be demolished for some reason such as by eminent domain*. Write in the lease what happens to the tenant and any of the tenant's responsibilities if these situations happen. You may see "attornment"* and "mortgage subordination"* mentioned in this section (see section 7: Terms and Definitions). Attornment* means that you agree to recognize the new owner as your landlord and the lease continues as before. A right of first refusal* clause allows the tenant a chance to buy the property if the landlord is selling it, but this is not common in commercial leases.



Tip From A Business Owner

Landlords change frequently in Somerville, and a new landlord may have different desires for the property than your previous landlord. Be prepared by knowing how to negotiate for your business, and save up funds for any legal fees you may need to pay in the future.

Estoppel Certificates* :

Many leases include a clause about Estoppel Certificates*, which are documents that either the tenant or landlord uses to verify to a third party – like a bank – the status of the lease. Estoppel Certificates are often used when the landlord is selling the building or refinancing the mortgage, and the tenant has to verify things like whether all rent is paid or if they have a claim against the landlord. There may be a related clause about mortgage subordination* that says what will happen when the landlord is refinancing the mortgage.

Example questions for the landlord:

- If the property ownership changes, can I keep the same terms that are outlined in this lease, including length, options*, and costs?
- If you are selling the property, can I have the right of first refusal*?
- Can you notify me 90-180 days prior to ownership changes?

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4: Managing Problems After You Sign Your Lease

Even if lease negotiations go well, not every commercial rental situation is easy. You can ask the City of Somerville Office of Economic Development or a business support organization (see 6: Business Support Resources) for suggestions about how to talk to your landlord about issues or violations; they may recommend that you talk to a lawyer (city staff cannot provide legal advice). Speaking with an attorney can be expensive, but it may help you understand what your options are. Sometimes having an attorney advocate on your behalf can help resolve an issue more quickly; sometimes you may have to go to court to resolve an issue. You might decide to hire an attorney to represent you in court, or you may choose to represent yourself "pro se" (without an attorney). Based on the dollar amount of the dispute, you would file with either the small claims court or district court. You would need to pay filing fees, but the clerks at the court will help you file papers, and they may send you and your landlord to mediation services, which are free.

Here are examples of difficult situations that may arise based on stories from businesses in Somerville.

Your landlord is unwilling to negotiate lease terms that work better for you:

In this situation, a local real estate broker who specializes in commercial properties may be able to help negotiate. Search online for "Somerville real estate brokers" and make sure they specialize in commercial real estate before you hire them. Even if you hire a broker, some landlords may be unwilling to negotiate; remember that you can always look for a different location if a space or the situation will not be good for your business.

Your landlord is bothering you or harassing you:

Keep a record of every incident and interaction with your landlord. Ask for help from a person or organization you trust – you can start with the Somerville-based organizations listed in this Handbook (see section 6: Business Support Resources). You may need a lawyer to help you talk to the landlord about whether the behavior violates the lease and what your options are.

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4: Managing Problems After You Sign

Your landlord claims you owe money:

Always keep good records of your payments to avoid this problem. Collect all bank statements, confirmations of electronic payments, and written communications about required payments to demonstrate that you have paid everything you owe. Check the lease to see if it includes a reasonable explanation of why your landlord thinks you owe money.



Tip From A Business Owner

Never pay the landlord in cash, since cash payments do not have a record and therefore you can't prove payments later on. You can prove any payment that goes through a bank account.

Your landlord violates the lease:

For example, your landlord refuses to do necessary repairs like fixing a leaky roof even though the lease states they will fix roof leaks. For another example, your landlord frequently enters your business without notice even though your lease states they must provide notice. Document the situation and contact your landlord to ask them to correct the problem. Remember to follow up in writing if you originally contacted them by text or phone, and keep a record of all communications. Write down everything that happened and take pictures or videos of damaged property or other issues if applicable. Keep records of any expenses you pay or other ways your business has been impacted by the problem, such as lost income from being closed. Collect statements from witnesses if applicable.

If the problem continues after talking to your landlord and your lease clearly states the landlord is doing something wrong, you may want to meet with an attorney to review your lease and discuss next steps. Note that if you stop paying rent or fulfilling your duties as required by the lease, you may be subject to eviction, damages, and legal fees.

4: Managing Problems After You Sign

You feel the premises are unsafe:

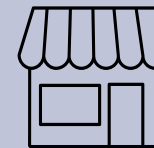
If you feel there is an unsafe condition in your leased space, notify your landlord immediately, in writing. While maintenance responsibilities are typically allocated to the tenant in the lease, the landlord may have a responsibility to use reasonable care in addressing unsafe conditions. Be sure to document the problem in writing or with photos or videos. If the landlord is unresponsive, you may want to seek legal counsel.

The owner or new owner is trying to demolish or redevelop your building while you are still a tenant:

Get help from a lawyer to show the owner that they have to honor your lease agreement so that you can stay in the building for the full duration of your lease.

If you have a problem not listed here:

Check out the "Commercial Leases 101" guide from the Transactional Law Clinics of Harvard Law School, which provides many additional "common leasing scenarios" that explain what to do when difficult situations arise for commercial tenants: <https://clinics.law.harvard.edu/tlc/files/2015/05/Commercial-Leases-101-Legal-Toolkit.pdf> Otherwise, you may contact a lawyer (see section 5: Finding Legal Support) or a Somerville-based organization (see section 6: Business Support Resources) for help.



Tip From A Business Owner

Remember that you are allowed to negotiate any part of your lease, including the length, cost, and condition of the space. You are allowed to get help from a lawyer, and you are allowed to take your time reviewing the lease before you sign it. Lease negotiation can be intimidating, but you are not alone.

5: Finding Legal Support

Negotiating a lease for your business can be intimidating, but legal support is available. An attorney who is knowledgeable about commercial leases and tenant disputes can help you understand the specific issues in a landlord's proposed lease and how it could affect your business, how to negotiate a lease to set your business up for success, and how to establish a good working relationship with your landlord.

5.1 Free Legal Support

Lawyers for Civil Rights (LCR) BizGrow provides free legal assistance to minority, immigrant, and women small business owners. Fill out the BizGrow Intake Form / BizGrow Formulario de Admisión to apply for free legal assistance / Para asistencia legal en español: linktree.com/bizgrow

Clinics at local law schools provide free or very low-cost legal services. They review draft leases, lease renewals, and lease amendments to help you understand a lease and/or provide suggestions, including how to approach your landlord. These clinics require at least 2-3 months of advanced notice before your lease, renewal, or amendment is due, meaning the clinics cannot support you when you have just a few days or weeks to respond to your landlord. The clinics provide only short-term support, and do not provide legal representation in court.

- **Transactional Law Clinics of Harvard Law School:** clinics.law.harvard.edu/tlc/for-clients/apply-for-services
- **Boston College Community Enterprise Clinic:** bclawlab.org/community-enterprise
- **Northeastern University Community Business Clinic:** law.northeastern.edu/experience/clinics/community-business

5.2 Paid Legal Support

Ask other business owners in Somerville to recommend a good private attorney at your preferred cost who is experienced in lease negotiations, commercial tenant disputes, or real estate.

- **Boston Bar Association Lawyer Referral:** bostonbarlawyer.org
- **MA Bar Association Referral:** massbar.org/public/lawyer-referral-service
- **Legal resources for low-income individuals** recommended by the Commonwealth of Massachusetts: mass.gov/info-details/finding-legal-help

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6: Business Support Resources

6.1 City of Somerville Business Support

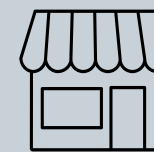
Join the City of Somerville's small business virtual office hours at 4-5pm on Thursdays to speak with City staff about permitting, licensing, inspections, and other general questions about doing business in Somerville. For more information, visit somervillema.gov/departments/office-strategic-planning-and-community-development-ospcd/ospcd-economic-development

Find available properties for your new business, business expansion, or relocation using Somerville SiteFinder at somervillema.gov/businesshelp

Ensure a property is zoned* to allow your business by emailing ISDzoning@somervillema.gov and provide the address of your desired location

Get language support through the Somerville Office of Immigrant Affairs (SomerViva) who will provide a referral to an interpreter or translator by emailing somerviva@somervillema.gov

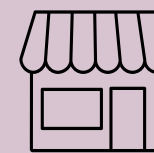
Sign up for the Somerville Economic Development Newsletter to stay up to date on what businesses should know in Somerville at somervillema.gov/departments/programs/doing-business-somerville



Tip From A Business Owner

The City's permitting and licensing support is fantastic - use it!

Ask for help! Many organizations are here to help you navigate the system and have the best outcome for your business.



Tip From A Business Owner

Asking for professional legal support during lease negotiation will help you have a better tenant experience in the long run. Legal support can be expensive, but worth it!

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6: Business Support Organizations

6.2 Business Support Organizations

Business support organizations exist to help your business reach your goals, whether that means setting up a business plan, increasing profit margins, expanding product lines, growing the number of patrons at your business, and more. Opportunities and program availability at these organizations may shift over time.

East Somerville Main Streets:

Direct support to businesses in East Somerville: eastsomervillemainstreets.org

Union Square Main Streets:

Direct support to businesses in Union Square: unionsquaremain.org

Somerville Chamber of Commerce:

Local Somerville business network: somervillechamber.org

Somerville Community Corporation:

Programs to sustain diversity and affordability for Somerville residents and businesses: somervillecdc.org

The Welcome Project:

Empowering and supporting immigrants in Somerville, including through language support: welcomeproject.org

(Regional) Center for Women and Enterprise (CWE):

Coaching, access to capital, and support for small business owners with a focus on women: cweonline.org

(Statewide) Massachusetts Growth Capital Corporation (MGCC):

Skills assistance, grants, and loans for small businesses: empoweringsmallbusiness.org

(Regional) SCORE Northeast Massachusetts:

Free online courses, workshops, and mentorship for small business owners of all types: score.org/nemassachusetts

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7: Terms and Definitions

Assignment: The act of transferring a lease to a different tenant. If you want to leave a property before the lease ends and if your landlord allows it, the lease may be “assigned” to another tenant for the remainder of the lease term. This is different than subletting, which is when a different tenant takes on only some of the responsibilities of the lease.

Attornment: If the property you are leasing gets a new owner, an attornment clause typically means the new owner is entitled to receive the rent listed in your existing lease, and the tenant recognizes the new owner as their landlord.

Consumer Price Index (CPI): The national measure of inflation, often used as a basis for rent increases.

Cure: When either the landlord or tenant fails to meet their obligations, they may have the opportunity to “cure” or fix the problem. For example, if the tenant has failed to pay rent for some reason, they may be able to cure the situation by making back payments and any associated penalties that are written in the lease. A “failure to cure” means the tenant or landlord fails to correct their action as was written in the lease.

Default: When the tenant doesn’t meet their lease obligations – for example, the tenant doesn’t pay rent as required in the lease – the tenant is in “default” and the landlord can go to court to evict the tenant from the property.

Eminent Domain: The government may take private property for public use. This is rare, but an eminent domain taking clause is often included in commercial leases.

Escape Clause: Different kinds of escape clauses allow a tenant or landlord to end the lease early or not pay rent under specific conditions, such as if the tenant cannot get the right permits to operate. Escape clauses are rare, but you can try to negotiate for an escape clause if you have specific concerns.

Escrow Agent: A neutral third party that may be authorized by the lease to hold funds during a dispute between the tenant and landlord. It is important to remember that when a landlord is required to take on a business expense, such as an escrow

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7: Terms and Definitions

agent, that cost is likely to be passed on to the tenant in other forms such as higher base rent.

Estoppel Certificates: Documents that the tenant or landlord have to provide to a third party, like an accountant or a bank, to verify terms of the lease. For example, when the landlord wants to sell the property, the tenant may be asked to write an Estoppel Certificate to a bank or potential buyer stating that all rent has been paid or whether the current landlord has any incomplete responsibilities.

Force Majeure: A Force Majeure clause in a lease will specify what to do if something happens on or near the property that is outside of the landlord's or tenant's control, such as natural disasters, terrorism, pandemics, or other unpredictable events. The clause might include what the tenant and landlord can each expect in these circumstances, such as whether the lease can end early.

Gross Rent Lease: A lease in which the tenant pays rent while the landlord pays for all other property and operating expenses. In a "modified gross lease," the tenant pays rent and a proportion or combination of other expenses, but not everything included in a triple net lease*.

Indemnity: Indemnification means one party will compensate another for their harm or loss. In a commercial lease, this usually means the tenant (and not the landlord) will be responsible for any harm or damage a third party – like a customer – may experience while in or on the leased property.

Landlord's Lien: If a lease contains a Landlord's Lien, it gives the landlord the right to take items like furniture, light fixtures, or any other items in the business from the tenant if the tenant owes the landlord money, such as unpaid rent.

Liquidated Damages: A predetermined amount of money may be paid by one party (the tenant or landlord) to compensate the other party if a certain issue arises. You can specify in the lease what is covered by liquidated damages and establish the amount the party would have to pay in that circumstance. Liquidated damages are not a penalty.

7: Terms and Definitions

MEP/MEP Systems: Mechanical, Electrical, and Plumbing systems, which should be properly functioning before the tenant moves in.

Mortgage Subordination: Many commercial leases state that the lease between a tenant and a landlord is secondary to the mortgage on the property. This means the lease is "subordinate" to the mortgage. If the property is sold or forecloses, the bank that holds the mortgage on the property takes ownership and is entitled to receive rent from the tenant.

Option to Renew: The tenant's right to extend their lease for a certain amount of time once the current lease ends.

Percentage Rent Lease: A lease in which all or some of the tenant's rent is calculated based upon a percentage of their business profits.

Personal Guarantees: A personal guarantee allows a landlord to draw from a tenant's personal assets, like the business owner's personally-owned property or bank accounts, if the tenant defaults on the lease or doesn't pay rent. Tenants should be careful before signing a lease that requires a personal guarantee that puts them at a greater financial risk.

Quiet Enjoyment: The tenant's right to use the leased property while they are a tenant without the landlord or other tenants disturbing their use or access.

Rent Abatement: When the tenant has free or discounted rent for an agreed-upon amount of time, such as while the landlord is completing Tenant Improvements* before the tenant can move into the space, or while waiting for permits from the City.

Rentable SF: The square footage of usable/leasable space in a commercial property, plus a proportion of any common areas of a shared building.

Right of First Refusal: A "right of first refusal" refers to when a tenant gets an opportunity that is not a legal right. In a commercial lease, it might mean the tenant gets the first option to rent additional space from the landlord if space on the landlord's property becomes available, or to make the first offer to purchase the commercial property if the landlord sells it. Any right of first refusal must be specified in the lease.

7: Terms and Definitions

Right to Cover: When a “right to cover” is included in the lease, a tenant can, after giving the agreed-upon notice to the landlord of a problem, pay for the cost to correct the problem themselves and request reimbursement from the landlord or withhold the amount of rent that the tenant spent to fix the problem.

Special Permits and Variances: Zoning bylaws or other municipal regulations may not allow certain activities. It is important to ensure your business activity or “use” is allowed by zoning in your desired location before you sign a lease. If you want to do something that the City of Somerville zoning doesn’t allow in that area by right, you or your landlord may need to apply for a special permit or variance from the City. This process can take a long time, and you might not be approved for the special permit or variance, or it might be approved only under certain conditions.

Tenant Improvements (TI): Tenant improvements are changes – often permanent ones – that the landlord will allow in a space before a lease begins or is renewed. A “Tenant Improvement Allowance” (TIA) is a set amount of money the landlord will provide to the tenant to make improvements before the tenant moves in. The TIs and TIA are specified in the lease.

Triple Net or “NNN” Lease: A lease in which the tenant pays all property and operating expenses including rent, utilities, insurance, maintenance, and property taxes.

Zoning: Zoning regulations control the types of uses and activities in different areas of a city. For example, some neighborhoods may be zoned to allow residential uses, while other areas might allow both residential and commercial uses, or just industrial use.

8: About The Lease Handbook

The Lease Handbook was created in 2025 in recognition of the rising costs of doing business and the displacement of small businesses occurring in Somerville. It was formed as a short-term strategy to help counteract displacement of small businesses alongside other mid- and long-term anti-displacement strategies.

The Handbook was written by the City of Somerville Economic Development Division with technical assistance by the Metropolitan Area Planning Council. Technical assistance was funded by the Massachusetts Community Compact Cabinet Best Practices Program grant awarded in Fall 2023. The City and MAPC spoke with 20 small business owners across the City, collaborated with the Small Business Anti-Displacement Taskforce, and consulted several commercial leasing and legal experts in Winter and Spring 2024 to develop the Handbook. The Handbook was translated into the languages most commonly spoken by business owners in Somerville and distributed to business owners across the City.

The Lease Handbook Authors and Collaborators

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