

HOT TOWN, SUMMER IN THE CITY: A Deep Dive Into the Implications of the NYC Council's Proposed Bill Requiring Landlords to Provide Air Conditioning in Residential Units

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A. Introduction

On July 18, 2024, with a daily average temperature of 79° F^[1] in New York City, Council Member, Lincoln Restler, declared that “[i]t has been *hot* this summer, like crazy hot.”^[2] To combat the heat, Restler proposed the NYC Council bill (File #: Int 0994-2024) – “Requiring that tenant-occupied dwellings be provided with cooled and dehumidified air” (hereinafter the “air conditioning amendment.”) This bill would be an amendment to the NYC Municipal Code requiring landlords to provide heat (for almost eight months of the year) and hot water.^[3] It would also require landlords to provide air conditioning for the summer months in their residential units.^[4] Restler explained that every year, New Yorkers are dying in their homes “from heat-related illnesses. . . . And not in a single one of those homes can you find an air conditioner. . . . It is getting worse each and every year, and just like we ask landlords to provide heat in the winter, we need our landlord to provide cooling in the summer.”^[5] According to 2017 data collected by the government, 91% of NYC households have a registered form of air conditioning.^[6] Mayor Eric Adams “who was born in Brooklyn and raised in Queens, [stated] that ‘everyday New Yorkers don’t have air-conditioners’ and that he had grown up without them. He joked that his mother would tell him to put his head

in the refrigerator on hot days.”^[7] Although most New Yorkers seem to have air conditioners, the air conditioning amendment seeks to target the remaining 9% of the city. So, what are the practical realities and implications of passing this amendment?

B. The Air Conditioning Amendment

I. Background

This amendment would join the bill requiring landlords to provide heat from October 1 to May 31, known as the “heating season.”^[8] The bill was initially passed in October of 1918 as a public health concern due to the Spanish Flu.^[9] “The Spanish flu led to a large expansion in the role of the Department of Health (“DOH”), as it implemented new public health measures across the city. The Heat Code was one of these measures and its implementation coincided with the highest period of morbidity in the city.”^[10] This amendment will ride the public health concern coattails already in this bill to extend to cooling; as Restler said, “we need to do something about the fact that heat [the] number one climate killer.”^[11]

II. How the Air Conditioning Amendment Works

The proposed air conditioning amendment requires landlords to provide central air (if the building has it) or an air conditioning unit in the living room of each residential unit.^[12] These units must be functional and run from June 15 to September 15 every year.^[13] The internal temperature of the apartment must be cooled to 78° when it is outside, and there must be a device capable of displaying the internal temperature and humidity.^[14] Upon its passing, this bill will go into effect in four years, with the possibility of a two-year extension for property owners with undue hardship; there are no exemptions.^[15] The DOH will educate tenants on their rights to cooling and benevolently provide landlords with standard-meeting A/C models and notice of any government incentive programs to assist in mandatory compliance.^[16] The fines for non-compliance can be up to \$1,250.00 *per day* for each violation from and including the date of notice, and a failure to cure results in a fine of up to \$1,500.00 *per day* for

each subsequent violation.^[17] Additionally, the landlord will be subject to a fee for a inspection that results in a violation (in addition to the penalty for the breach).^[18]

C. Problems with the Air Conditioning Amendment

The bill is well intended, but there is a significant burden on owners and several unaddressed issues. These problems range from legislative to climatological to financial.

I. Legislative Conflict

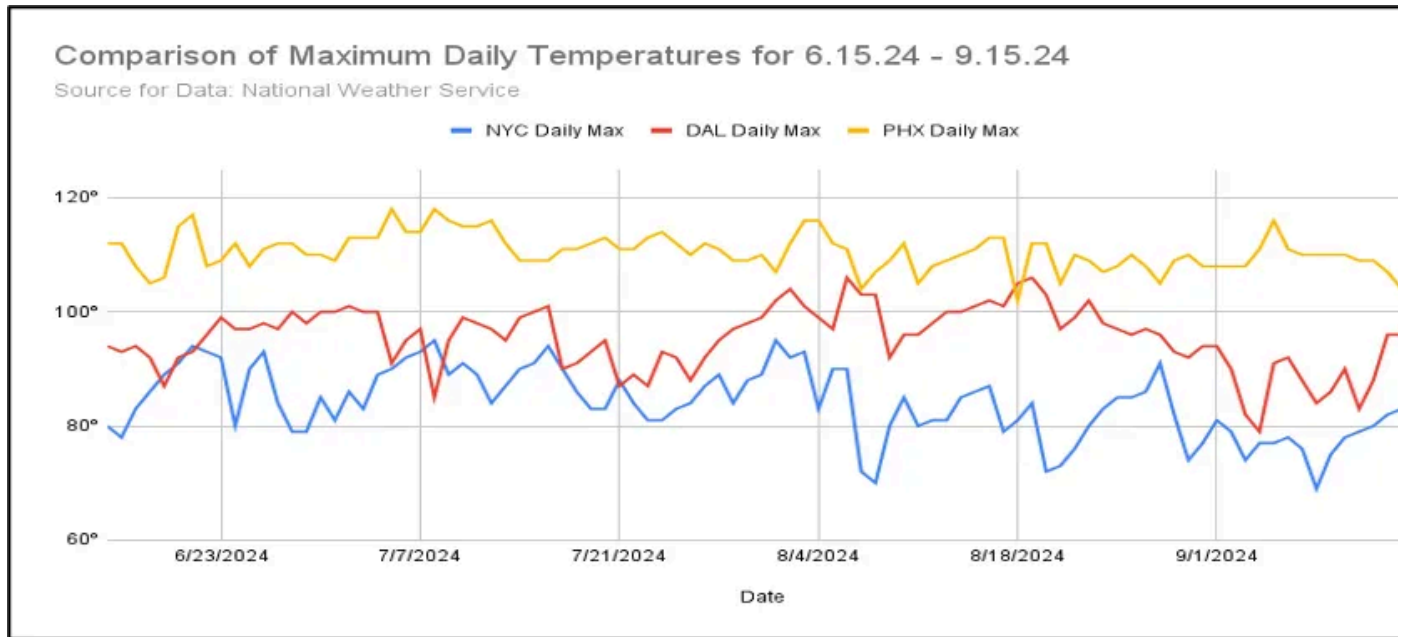
The first issue is that this proposed amendment directly conflicts with Local Law 9^[19] Local Law 97, passed in 2019, seeks “to reduce the emissions produced by the city’s largest buildings [by] 40 percent by 2030 and net zero by 2050.”^[20] The bill lists the various changes that buildings in the city must undergo to comply with it, including retrofits and upgrades to heating and *cooling to reduce emissions and improve energy efficiency* (emphasis added). Despite 994’s generous offer to provide guidance with “[th]e types of cooling and dehumidifying systems that have the capacity specified in . . . [and] [t]he cost, size, and energy efficiency of such cooling and dehumidifying systems . . .”^[21] increasing the number of cooling units in the city, despite whatever energy efficiency capacity it may have, will ultimately increase greenhouse gas emissions.

Cooling units provide for a significant amount of greenhouse gas emissions. “Cooling is a big contributor to global warming. Much of the existing cooling equipment use hydrofluorocarbon refrigerants . . . [e]ven with the phasedown of hydrofluorocarbon emissions from . . . air conditioning are expected to double by 2030 and triple by 2050, rising from 7 percent of global GHG emissions today.”^[22] The Council would require *all* NYC units to run consistently for three months. This includes the current 91% of New Yorkers that already have cooling units, and potentially the 9% of New Yorkers targeted by the proposed amendment. How is the City supposed to reach net zero emissions by 2050 if the city is requiring A/C to run consistently, effectively increasing emissions?

II. New York City v. Cities with Mandatory Cooling

The second issue is whether NYC's temperatures require mandatory cooling. To determine whether the City's need for cooling will be worth the financial and environmental cost, city temperatures can be compared to that of Phoenix, Arizona and Dallas, Texas: two places with mandatory cooling laws. Arizona law requires a landlord to "[m]aintain in good and safe working order and condition all . . . air-conditioning and other facilities and appliances . . . supplied or required to be supplied by him."^[23] The City of Dallas' Municipal Code states that "[a]n owner shall: provide and maintain, in operating condition, refrigerated air equipment capable of maintaining a room temperature of at least 15 degrees cooler than the outside temperature, but in no event higher than 85° F. in each habitable room"^[24]

Arizona and Dallas are places with extreme heat where mandatory cooling laws seem justified. Should New York be subject to the same type of law? The (self-plotted) graph below documents weather from the National Weather Service for NYC, Dallas, and Phoenix from June 15 to September 15, 2024 (the "cooling month" dates, should the law pass).^[25] Except for a few Dallas outliers, NYC is the coolest of these three cities with an average daily maximum temperature of 84° and reaching a high of 95° on June 8 and August 1.^[26]



Although there is a slight overlap between New York and Dallas' temperatures, it does not mean New York should be subject to the same laws. Nor should New York be subject to the same laws as Arizona since the data does not overlap at all. Cities can feel hotter, mainly due to the heat island effects.^[27] However, compared to cities with such legislation, the data is not objectively convincing enough to make such significant legislative changes in New York.

III. Economic Cost

The last issue is who bears the cost of running and using the air conditioning. The amendment is silent on the matter, but comparing it with the rest of the bill, the cost may be passed on to the tenant depending on the lease terms (and the cost of A/C in NYC is not minimal). "NYC residential electric customers using 280-kilowatt hours would see their bills increase by \$3.85 to \$94.00, which is an increase of 4.3%."^[28] Simply put, when a standard in window A/C unit using 1 kilowatt per hour is run for 9.3 hours per day for 30 days, the consumer is using 280 kilowatt hours.^[29] This means that there would be an additional unbudgeted monthly fee of up to \$94.00 for New Yorkers. When the current housing emergency is encouraging more and more

legislation to attempt to regulate rent prices, requiring landlords to provide another cost to the tenant seems antithetical to that attempt.^[30]

D. Alternate Solutions

New York City's over 500 cooling centers are the current answer to beat the heat.^[31] A cooling center is a place with air conditioning that "will help keep you safe . . . [like to] a mall, museum, coffee shop, [or] library. . . ."^[32] The target for this bill is likely the concern for home-bound New Yorkers who may be unable to get to a cooling center for low-income residents who may not be able to afford the cost and utility of an air conditioning unit. A remedy for those groups would be city programs and vouchers to provide or subsidize affordable cooling units. The city already offers many social services, such as food and rent vouchers.^[33] Adding similar vouchers for A/C units and electricity bills should be well within the abilities of the NYC Department of Social Services.

While well-intentioned, there are too many unknown and unaccounted-for variables that are significant in consideration of the implementation of this program. Requiring landlords to provide A/Cs to all residential units will undoubtedly raise greenhouse emissions and the rent to cover energy costs: two factors that the State and City governments have been trying to lower.^[34] Not to mention that the costs of owning and managing property in NYC will increase for landlords. Although that is not a primary concern for the legislature, those costs will likely be passed on to the tenants. If the concern is for the home-bound and the low-income, the City should add to existing subsidies and programming which service those groups. Implementing this law would further harm NYC's housing crisis and environment.

Conclusion

Undoubtedly, Restler's proposed air conditioning bill is well intended. It is admirable and within the rights of the Council to try and pass such legislation to protect the low-income and homebound from unnecessary dangers. However, before the proposed bill

is implemented, Restler needs to strongly consider how it will be enforced. There are direct conflicts with Local Law 97. Restler stated that “[w]e need new regulatory and enforcement models that can actually ensure that people are safe in the face of climate change.” However, Restler may discount the Council's work for climate change and may fail to consider that this proposed amendment will only add to climate change. Additionally, it is reasonable for a city with incredibly high temperatures, such as Dallas or Phoenix, to institute mandatory cooling. According to the aforementioned data, NYC falls short in its heat relative to Dallas or Phoenix; thus, this legislative change isn't empirically supported. Lastly, a primary concern for the average New Yorker, specifically a lower-income New Yorker, would be the bearer of cost. Yet, the bill is silent, leaving ample room for landlords to foist the additional electricity costs onto their tenants. There are alternate solutions to provide cooling to concerned demographics. Still, until there is clarity on the unknowns of the air conditioning amendment, it is likely that this will not pass, and these groups will continue to suffer the consequences.

^[1] According to the National Weather Service, the temperatures in Central Park, NY on July 18, 2024, were an average of 79° with a high of 86° and a low of 72°.

^[2] N.Y.C. Council Int. No. 994 (2024), City Council Minutes, July 18, 2024, City Record July 19, 2024, at 55.

^[3] *Id.*

^[4] This amendment is an addition to article 8, “Heat and Hot Water,” of subchapter 2, “Maintenance, Services, and Utilities,” of chapter 2, “Housing Maintenance Code,” title 27, “Construction and Maintenance,” of the administrative code of the city of New York.

^[5] N.Y.C. Council Int. No. 994 (2024), City Council Minutes, July 18, 2024, City Record July 19, 2024, at 55.

[6] New York City Department of Health, Environment & Health Data Portal, Household air conditioning, 2017, <https://a816-dohbesp.nyc.gov/IndicatorPublic/dataexplorer/housing-safety/?id=2185>.

[7] Hilary Howard, *New York City Bill Would Mandate Air-Conditioning for Tenants*, The New York Times (July 17, 2024) <https://www.nytimes.com/2024/07/17/nyregion/new-york-city-air-conditioners.html>.

[8] N.Y.C. Administrative Code 27-2029.

[9] Rebecca Wright, *68 Degrees: New York City's Residential Heat and Hot Water Code as Invisible Energy Policy*, 28 Env't Hist. 711 (2023). "It was the so-called Spanish flu of 1918 that forced the Department of Health to take seriously the danger of cold apartments . . . In October 1918, Section 225 was added to the Sanitary Code requiring a minimum temperature of 68 degrees in places of residence of one or more persons 'at all such times.'"

[10] *Id.*

[11] N.Y.C. Council Int. No. 994 (2024), City Council Minutes, *supra* at 55.

[12] N.Y.C. Council Int. No. 994 (2024); There is an additional humidity/dehumidifying component to the requirements that is omitted for the purpose of this inquiry.

[13] N.Y.C. Council Int. No. 994 (2024).

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[\[18\]](#) *Id.*

[\[19\]](#) N.Y.C. Charter 651 (2024).

[\[20\]](#) *Id.*

[\[21\]](#) N.Y.C. Council Int. No. 994 (2024).

[\[22\]](#) Interview with Mark Radka, Chief of the Energy and Climate Branch of UNEP, *Air conditioners fuel the climate crisis. Can nature help?* (June 30, 2023), <https://www.unep.org/news-and-stories/story/air-conditioners-fuel-climate-crisis-can-nature-help#:~:text=How%20does%20cooling%20contribute%20to,double%20burden%20for%20climate%20change>.

[\[23\]](#) Ariz. Rev. Stat. § 33-1324 (2024).

[\[24\]](#) City of Dallas, Texas Code of Ordinances Sec. 27-11(e)(1)(a); the remainder of the code is “(ii) maintain all fixed air conditioning systems, including air conditioning units, covers, panels, conduits, and disconnects, in operating condition, properly attached and (iii) install window-mounted air conditioning units, if provided, in compliance with the construction codes.”

[\[25\]](#) Data from the National Weather Service organized, compiled, and graphed by Elizabeth Wallach.

[\[26\]](#) The average daily maximums for Dallas and Phoenix were 95° and 110°, respectively.

[\[27\]](#) Environmental Protection Agency, Heat Island Effect, 2024, <https://www.epa.gov/heatislands>. “Heat islands are urbanized areas that experience higher temperatures than outlying areas. Structures such as buildings, roads, and other infrastructure absorb and re-emit the sun’s heat more than natural landscapes such

forests and water bodies. Urban areas, where these structures are highly concentrated and greenery is limited, become “islands” of higher temperatures relative to outlying areas. Daytime temperatures in urban areas are about 1–7°F higher than temperatures in outlying areas and nighttime temperatures are about 2–5°F higher.”

[28] ConEdison, Current Outlook and Yearly Impacts to Energy Costs, 2024, <https://www.coned.com/en/accounts-billing/your-bill/about-con-edisons-rates>.

[29] Arithmetic provided by ChatGPT: If an appliance uses 1 kilowatt-hour (kWh) for 9.3 hours a day, here’s how to calculate the total energy use: Daily Energy Use: 1 kWh/hour × 9.3 hours = 9.3 kWh per day; Weekly Energy Use: 9.3 kWh/day × 7 days = 65.1 kWh per week; and Monthly Energy Use: 9.3 kWh/day × 30 days = 279 kWh per month.

[30] Press Release, N.Y.C. Council, New York City Council Votes to Declare Continuing Housing Emergency to Maintain Rent Stabilization Laws (March 19, 2024), <https://council.nyc.gov/press/2024/03/19/2576>.

[31] New York City, Cooling Centers Map, 2024, <https://finder.nyc.gov/coolingcenters/locations?mView=map>.

[32] New York City, Cool Options, 2024, <https://finder.nyc.gov/coolingcenters>.

[33] New York City, Department of Social Services, 2024, <https://www.nyc.gov/site/dss/index.page>.

[34] Press Release, N.Y.C. Council (March 19, 2024).

[35] N.Y.C. Council Int. No. 994 (2024), City Council Minutes, *supra* at 55.

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