# Testimony of Commissioner Julie Menin New York City Department of Consumer Affairs Before the New York City Council Committee on Environmental Protection Hearing on

Introduction 850: Regarding the Use of Air Conditioning Systems

September 8, 2015

#### Introduction

Good morning Chairman Constantinides, Council Member Richards, and members of the Committee on Environmental Protection. I am Julie Menin, Commissioner of the Department of Consumer Affairs ("DCA"), and I am joined by my colleagues, Alba Pico, First Deputy Commissioner, Amit Bagga, Deputy Commissioner of External Affairs, Marla Tepper, Deputy Commissioner of Legal Affairs and General Counsel, and Mary Cooley, Director of City Legislative Affairs.

Thank you for inviting us to testify in support of Introduction 850 ("Intro 850"), which would require brick-and-mortar storefront businesses in New York City to keep their doors and windows closed while an air conditioner ("A/C") or a central cooling system is operating. Intro 850 is an expansion of Local Law 38 of 2008 ("Local Law 38"), which only requires those stores that are a minimum of 4,000 square feet in size or part of a chain of five or more stores in New York City to keep their doors closed when the A/C or a central cooling system is running.

Intro 850 is being introduced in conjunction with Mayor de Blasio, who has made the protection of New York City's environment and the reduction of harmful greenhouse gases a top priority. This bill will enable the city to make progress towards reductions in energy use and the generation of emissions. Nearly three-quarters of New York City's greenhouse gas emissions come from energy used to heat, cool, and power buildings. In the context of climate change and the need for a more sustainable and resilient city, the Mayor has committed to a significant reduction in emissions, and businesses, consumers, and City government all share a responsibility in working to reduce these emissions.

One of the easiest ways in which businesses in our city can curb their demand for energy is by keeping their doors and windows closed while the A/C is running. We know that many businesses leave their doors open with the A/C running during the hot summer months, a practice that might provide momentary reprieve from the heat to consumers or passersby, but is harmful to our city's environment – as well as to a business' bottom line.

DCA has been enforcing Local Law 38 since it went into effect. We fully support the proposed changes to the existing law and urge the Council to pass Intro 850. Once passed, the new law

<sup>&</sup>lt;sup>1</sup> Press release, Office of the Mayor of the City of New York: http://www1.nyc.gov/office-of-the-mayor/news/451-14/mayor-de-blasio-commits-80-percent-reduction-greenhouse-gas-emissions-2050-starting-with#/0

will significantly reduce confusion on the part of business owners and reduce challenges the agency faces in ensuring compliance.

#### **Energy and Environmental Benefits**

The case for requiring businesses to keep their doors closed while the A/C is running is clear. According to the Mayor's Office of Sustainability ("MOS"), in 2013, commercial buildings were responsible for 10 million metric tons of greenhouse gas emissions in New York City, comprising approximately 20 percent of the City's total emissions. Many of these emissions are generated by heating and cooling systems, which themselves are also often outdated and inefficient. Even as buildings are retrofitted to become more efficient, leaving doors and windows open while the air conditioning is on during the summer increases emissions and the cost of doing business. When a business leaves its doors open with a cooling system running, large amounts of cool air escape the building, forcing the cooling system to expend more energy to maintain the lower temperature. The expenditure of more energy increases emissions, which in turn contribute to pollution and climate change.

Based on data published by Con Edison, if just 1,000 businesses in New York City were to keep their doors open during the summer for eight hours each day, \$1 million would be added to summer electric bills and 2,200 tons of carbon dioxide would be released into the atmosphere, the equivalent of putting an additional 366 cars on the road.<sup>3</sup> As New York City is home to tens of thousands of businesses, we know that requiring businesses to keep their doors and windows closed while the A/C is running could have a major impact on our City's environment and would put money back in the pockets of businesses and building owners.

It is with the important goal of reducing emissions that Intro 850's enforcement provisions have been designed. As Local Law 38 has been difficult to enforce, compliance has been challenging. Under Intro 850's provisions, small businesses will not face onerous burdens with respect to compliance and DCA will have an enhanced ability to conduct enforcement.

#### Outreach and Enforcement

As is the case with any new law that is passed regulating business practices, small businesses will need time to learn about, and come into compliance with, Intro 850's expansion of existing law.

Intro 850 would allow businesses to receive warnings, not fines, for the first violation observed before June 1, 2016, giving DCA, our sister agencies, and our partners such as chambers of commerce and industry associations, sufficient time to conduct outreach to businesses about the expansion of existing law. The agency is a strong proponent of business education efforts, and is deeply committed to raising awareness about this issue with small businesses. As many members of the Council are aware, on July 22 of this year, DCA undertook a major education and outreach

<sup>&</sup>lt;sup>2</sup> The City of New York, Inventory of Greenhouse Gas Emissions, November 2014. Accessed June 2015. http://www.nyc.gov/html/planyc/downloads/pdf/NYC GHG Inventory 2014.pdf

<sup>&</sup>lt;sup>3</sup> Con Edison, The Price of Open Doors. Accessed June 2015. http://www.coned.com/customercentral/brochures/Open%20door%20flyer.pdf

effort to encourage businesses to "Shut the Front Door!" while their air conditioning is on. More than 200 volunteers, including many Council Members and other elected officials, visited several thousand businesses in all five boroughs to educate businesses about the environmental and fiscal impacts of keeping their doors open while running the air conditioning. The public awareness campaign included many components, including the distribution of a multilingual informational flier and a "cling" that a business could post on its front door, demonstrating that it is proud to "Shut the Front Door!" The campaign also featured social media engagement tools, and posters installed in bus shelters and on phone kiosks. Examples of these materials are in the folders you have received this morning.

Through our outreach efforts, DCA has communicated with business owners across all five boroughs about Local Law 38. While a large number of business owners have expressed support for the law and are readily complying, we have, of course, also spoken with business owners who have raised certain concerns, and we appreciate that Intro 850 addresses some of these concerns, and one in particular, which is related to sidewalk cafés.

As members of the committee are aware, DCA licenses businesses to operate sidewalk cafés in our city. As these cafés are often crucial sources of revenue for many restaurants and are indelible to New York City streetscapes and civic life, Intro 850 exempts restaurants with doors or full-length windows that must remain open so that sidewalk cafés can be serviced. There are just over 1,350 licensed cafés in New York City, a figure small enough compared to the total number of brick-and-mortar businesses in our city to justify an exemption, especially when the absence of one could have particularly adverse effects on a business' revenue.

To ensure the bill is effective in achieving its goal of reducing energy use, Intro 850 also requires businesses to keep their windows closed while the A/C is running. Attendant to this requirement, DCA supports the exemption that allows for an exterior window to remain open if it is being used in direct relation to customer service.

Considering the exemptions provided for in the bill and taking into account the amount of money that businesses could potentially save by keeping their doors and windows closed, DCA believes the burden imposed on small businesses will be minimal. We are not aware of any studies, reports, or data that demonstrate a substantial correlation between keeping the doors open and increased profits, an absence that should underscore the strength of the environmental and fiscal cases supporting the passage of Intro 850.

Intro 850 will also enhance DCA's ability to effectively enforce the existing law, which, as we have noted, only applies to chain stores with five or more locations in New York City or retail businesses that are 4,000 square feet or larger. When inspecting a business on patrol, DCA's inspectors do not have the ability to easily determine the exact size of a business or whether or not it has more than five locations in New York City. Additionally, while business owners or landlords might have information about the exact size of a storefront area, managers or employees are neither privy to, nor can they easily access, such information. Between constraints faced by our inspectors and confusion faced by business owners, enforcement of this existing law has proven to be quite challenging.

Considering the importance of the law, however, DCA has prioritized the enforcement of existing law under Mayor de Blasio's leadership. In 2015 to date, the agency has conducted 1,357 inspections, a 132% increase over last calendar year, when we conducted 584 inspections. We have issued 19 violations and 267 warnings this year, also a significant increase from 2014, when only 64 warnings were issued. In 2015, more inspections to determine compliance with this law have taken place than in any year since the law went into effect.

By expanding the door and window closure requirement to nearly all storefront businesses, Intro 850 will take the guesswork out of enforcement with respect to square footage. If all businesses, with just a few exemptions, must comply with the law, our inspectors would no longer be forced to forego enforcement because they are uncertain of the size of a store. Additionally, by expanding the law, businesses are less likely to be confused about whether or not the law applies to them, which will hopefully encourage greater compliance.

Enforcement will also be more effective as a result of the reasonably higher penalties proposed in Intro 850. The current law, which requires DCA to issue warnings in perpetuity for all first violations and has a low fine structure, does not incentivize compliance. Intro 850 contemplates that chain stores are more likely to comply if they have to pay \$500 for an initial or \$1,000 for repeated violations, as compared to the current fines, which reach a ceiling of \$400. Non-chain stores, which are often smaller businesses, would still only be subject to fines that are similar to the current fine structure, with fines now proposed at \$250 for initial and \$500 for repeat violations. Additionally, DCA will no longer issue warnings for the first violation after June 1, 2016, which would also make the proposed penalty structure more of a deterrent.

#### Conclusion

New York City must play its role in reducing emissions and decreasing the demand for energy to guard against the ills of climate change. The implementation of Intro 850 will enable us to protect our natural environment and also foster a regulatory environment that is friendly to businesses.

Considering the significant environmental and fiscal benefits Intro 850 will provide to our city's environment and businesses, DCA urges the Council to pass this bill into law. Thank you for the opportunity to testify today. I will be happy to take any questions.

## Testimony of Anthony Fiore Director of Energy Regulatory Affairs New York City Mayor's Office of Sustainability Before the

#### **New York City Council Committee on Environmental Protection**

### Hearing on Introduction 850 Regarding the Use of Air Conditioning Systems

September 8, 2015

#### Introduction

Good morning Chairman Constantinides and members of the Committee on Environmental Protection. I am Anthony Fiore, Director of Energy Regulatory Affairs in the Mayor's Office of Sustainability, and I am joined by my colleague, John Lee, Deputy Director for Green Buildings and Energy Efficiency. The Mayor's Office of Sustainability applauds Chairman Constantinides and Council Members Richards in conjunction with the Mayor for addressing this important effort to increase citywide energy conservation, sustainability, and resiliency through this bill.

Thank you for inviting us to testify in support of Introduction 850 ("Intro 850"). Intro 850 expands on Local Law 38 of 2008 ("Local Law 38"), which requires stores 4,000 square feet or larger and retail chains with at least five or more stores to keep their front doors closed when using an air conditioner. Intro 850 proposes to extend this requirement to all retailers, regardless of size and number of chain stores. We believe this expansion aligns with the original language of Local Law 38, which states that "it is the public policy of the City of New York to conserve energy, reduce peak power demands during hot weather periods and limit environmental pollution and local contributions to global warming."

#### Benefits to Energy Efficiency, Reliability, Affordability, and the Environment

Businesses that leave their doors open with the A/C running during summer months waste energy, threaten the reliability and affordability of our energy supply, and generate unnecessary greenhouse gas emissions.

A store with opened doors letting cool air leak out onto the hot sidewalk is one of the most conspicuous wastes of energy in New York City. The Office of Sustainability's analysis of Local Law 87 Energy Audit data tells us that 10% to 20% of energy use and greenhouse gas emissions in buildings comes from cooling in commercial spaces. Con Edison has estimated that if 1,000 businesses kept their doors open this summer while running the A/C, it would mean:

- 4.2 million kilowatt hours of electricity wasted
- \$1 million added to summer electric bills
- 2,200 tons of carbon dioxide released into the atmosphere, equal to 366 more cars on the road<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> Con Edison Price of Open Doors Brochure. Accessed September 2015. http://www.coned.com/customercentral/brochures/Open%20door%20flyer.pdf

This practice also occurs at the most inopportune time of year from an energy reliability standpoint. Wasteful cooling coincides with peak electricity load demand days. These are the hottest days of the year, when our aging energy generation and distribution systems are already struggling to meet demand from added air conditioning. Wasteful air conditioning increases the likelihood of brown outs and black outs, which can be extremely costly to the economy.

In order to reliably serve peak demand, utilities traditionally invest in more power generation and distribution infrastructure. The costs borne by utilities to provide this reliability in our power supply are passed on to consumers through rate increases. The greater this peak demand level, the larger the cost to consumers. Wasteful cooling in businesses with open doors adds to peak demand, and thereby works against the reliability and affordability of electricity in New York City. With energy reliability and affordability an ongoing concern in NYC, it makes sense to curtail this unnecessary practice.

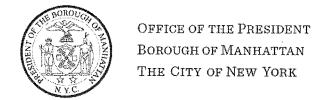
The City has also been working hard to meet the twin goals of reducing greenhouse gas emissions by 80% from 2005 levels by 2050, and to reduce greenhouse gas emissions from buildings by 30% by 2025. Over 70% of New York City's greenhouse gas emissions in 2014 came from buildings, or roughly 34 million tons of carbon dioxide equivalent. It is difficult to calculate the impact of this bill on greenhouse gas emissions, largely because it is unknown how many businesses run their A/C with the doors open. However, if we assume that 10,000 businesses would be compelled to change their practice of running their A/C with the doors open, this bill would have the result of reducing greenhouse gas emissions by 22,000 tons of carbon dioxide equivalent, equal to removing more than 3,600 cars from the road. The emission reductions from this segment would represent a helpful contribution to reaching the City's greenhouse gas emissions goals.

While the emission reductions stemming from this bill will help the City reach the 2050 goal, it also will help deliver an important message about energy conservation. It is wasteful energy practice to run the A/C with open doors, which places an economic burden on the rest of NYC ratepayers. In addition to saving energy the City would be sending the message that it does not condone such wasteful practices practice, but supports the type of behavioral change needed for the City to realize its carbon reduction goals. Eliminating this type of conspicuous energy waste will eliminate a behavioral barrier, removing some of the discord in how our City thinks about energy conservation.

#### Conclusion

In April, the Mayor released the One NYC report. This report articulated four key visions for the City's future. It described a growing, thriving City that is just and equitable, is resilient against the impacts of climate change, and is the most sustainable big city in the world. This bill supports each of these four visions. Considering the energy efficiency, resiliency, affordability, and sustainability benefits of Intro 850, the Mayor's Office of Sustainability urges the Council to pass this bill into law. Thank you for the opportunity to testify today. I will be happy to take any questions.

<sup>&</sup>lt;sup>2</sup> The City of New York, Inventory of Greenhouse Gas Emissions, November 2014. Accessed September 2015. http://www.nyc.gov/html/planyc/downloads/pdf/NYC\_GHG\_Inventory\_2014.pdf



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Gale A. Brewer, Borough President

### Gale A. Brewer, Manhattan Borough President Testimony for the Committee on Environmental Protection September 8, 2015

Good morning. My name is Gale A. Brewer and I am the Manhattan Borough President. Thank you to Chair Constantinides and the members of the Environmental Protection Committee for the opportunity to testify today.

As a member of the City Council, I worked to pass Local Law 38 of 2008 to prohibit the practice of businesses propping open their doors while operating their air conditioning or central cooling system. The current law only applies to those businesses that are either larger than 4,000 square feet or are part of a chain with five or more locations. Violators are to receive a written warning upon first offense, and shall be liable for a \$200 fine for each open door or window upon a second violation.

Following a series of summers marred by blackouts and brownouts across the five boroughs, this measure presented a common sense approach to reducing electricity usage and preventing energy abuse. I would especially like to recognize Eric Goldstein at the Natural Resources Defense Council and Clyde Haberman, formerly a reporter at the New York Times, for their tireless advocacy on this issue.

After the law went into effect, my councilmanic office developed an informational flier for businesses in my upper West Side district which were distributed by me, my staff and volunteers. This type of proactive education and outreach is essential and after bringing the law to the attention of the store managers, most complied with the law.

Each warm weather season though, my office would be contacted by constituents complaining of the pattern of disregard displayed by some of our city's large retailers, especially on Fifth Avenue, south of Central Park and along 34 Street between 5th and 7th avenues. There my staff and I would witness a myriad of businesses keeping their doors open on hot days, wasting energy and breaking the law with seemingly little to no enforcement by the City Department of Consumer Affairs.

This year the Department of Consumer Affairs, to the credit of Commissioner Julie Menin, has made the most significant efforts to date in enforcing this law through education, inspections and the issuance of violations where appropriate. Int. 850-2015 embraces the same environmental mindfulness by proposing to expand the current law to apply to small stores (retail or wholesale establishments under four thousand square feet) and also requiring that stores which are part of a chain post a notice on each door stating that violations may be reported to 311.

Open door policies epitomize pointless waste at the cost of the common good, and the law prohibiting them should be expanded to cover all businesses. But prior to enforcement actions against small businesses in particular the City should undertake a comprehensive education campaign utilizing multiple languages, various forms of media, and door-to-door outreach to communicate about the law before violations are issued.

Thank you again for the opportunity to testify. City organizations must work together to protect the environment and I urge the Committee to vote in favor of the bill.



#### STATEMENT OF THE NATURAL RESOURCES DEFENSE COUNCIL

#### BEFORE THE NEW YORK CITY COUNCIL

#### COMMITTEE ON ENVIORNMENTAL PROTECTION

### CONCERING LEGISLATION TO CONCERVE ENERGY, REDUCE BROWN-OUTS AND PREVENT UNNECESSARY AIR POLLUTION

#### September 8, 2015

My name is Eric A. Goldstein and I am an attorney with the Natural Resources Defense Council, ("NRDC"). NRDC, as you know Mr. Chairman, is a national, non-profit legal and scientific organization that has been active on a wide range of environmental, public health and quality-of life issues both around the nation and here in New York City since 1970.

We are pleased to be here today to testify in support of the Constantinides/Richards energy conservation bill, Intro. 850. This legislation would require sensibly all retail and commercial establishments, regardless of size, to keep their exterior doors closed while air conditioners or central cooling systems are operating.

#### The Need for Action

The need for this legislation is self-evident. Businesses that leave their doors open with their air conditioners blasting cold air onto the sidewalk are wasting energy, boosting global warming emissions and increasing the risks of brown-outs and black-outs in New York City.

In terms of energy, the Long Island Power Authority estimated in 2007 that that leaving store doors open while air conditioners are operating can send summer electricity usage at such establishments up by 20% to 25 %. A 2008 analysis by the Steven Winter Associates consulting firm concluded that operating costs for retail establishments that left their doors open could be up to \$1,000 higher over the course of the summer. And Con Edison has cited similar figures, according to the city's Department of Consumer Affairs.

The amount of global warming gases emitted from this wasteful open door practice is also significant. According to Con Edison, a single business closing its doors during the summer months could cut 2.5 tons of carbon dioxide emissions effortlessly. Thus, passage of Intro 850 would be perfectly consistent with the de Blasio Administration's and the City Council's

commitment to dramatically reduce New York City global warming emissions by 80 per cent by 2050.

Moreover, overall air pollution also is generated when retailers prop doors open with air conditioners blasting on the hottest days of the year when energy demand is already soaring. To meet this high demand, utilities like Con Edison are forced to rely on peak power fossil fuel plants that are expensive to fire up and that emit more air pollutants associated with burning oil or gas than modern power generators.

Finally, the extra demand for power that is required to "cool the sidewalks" when shopkeepers leave their doors open during the dog days of summer increases the risk of blackouts and brownouts. This isn't just a theoretical concern. Earlier this summer on July 20<sup>th</sup> and 21, when the temperatures shot into the 90s and power demand surged, NRDC staff observed stores around the city with their doors open and AC's blasting. This took place as Mayor de Blasio called on all New Yorkers to conserve power. Nevertheless, Con Edison reduced voltage to parts of Queens and Brooklyn and more than 19,000 customers in two Staten Island neighborhoods lost power completely.

#### Local Law 38 of 2008 Sought to Solve the Problem

The City Council sought to address these threats in 2008 when, under the leadership of then Councilmember Gale Brewer, it passed what became Local Law 38 of 2008. That statute declared the Council's intent "to conserve energy, reduce peak power demands during hot weather periods and limit environmental pollution and local contributions to global warming." To the end, statute prohibited stores 4,000 square feet or larger and chains of any size with more than five or more stores from leaving their doors ajar while air conditioners or central cooling systems are operating.

But Local Law 38 contained a critical gap. Its restrictions did not apply to stores under 4,000 square feet. This loophole not only exempted a large number of retail establishments from having to comply with the closed door mandate. It also made enforcement of the statute far more difficult, since city inspectors do not have an easy way to determine the square footage of offending stores. For this and other reasons, enforcement of Local Law 38 has historically been weak. And many stores, even those of 4,000 square feet or larger, have continued their energy-wasting open door policy.

Indeed, informal surveys conducted by NRDC during July and August have confirmed the lack of compliance and the continuing problem. This summer, NRDC's survey was conducted along commercial strips in Chelsea (5<sup>th</sup> Avenue from 14<sup>th</sup> Street to 23<sup>rd</sup> Street); Harlem (125<sup>th</sup> Street from St. Nicolas Avenue to Malcolm X Blvd.); the Upper West Side (Broadway from 86<sup>th</sup> to 96<sup>th</sup> Street) and the Midwood section of Brooklyn (Kings Highway from East 16<sup>th</sup> Street to East 11<sup>th</sup> Street).

#### NRDC Survey Finds more than 1 in 5 Retailers are Leaving Doors Open with ACs On

Across these four neighborhoods, NRDC found that 21% of all stores surveyed (62 out of 291) had their doors propped open when the temperature was 90 degrees or higher. Many, but not all, of the offending stores were probably smaller than 4,000 square feet, but the energy they were wasting was significant, nevertheless.

Here's what we found:

In **Chelsea**, 15 of 67 stores surveyed (22%) on July 20<sup>th</sup> and 21<sup>st</sup> had open doors with air conditioners pumping.

On the **Upper West Side**, 8 of 87 stores surveyed (9%) on July 21<sup>st</sup> had open doors and air conditioners cooling the sidewalks.

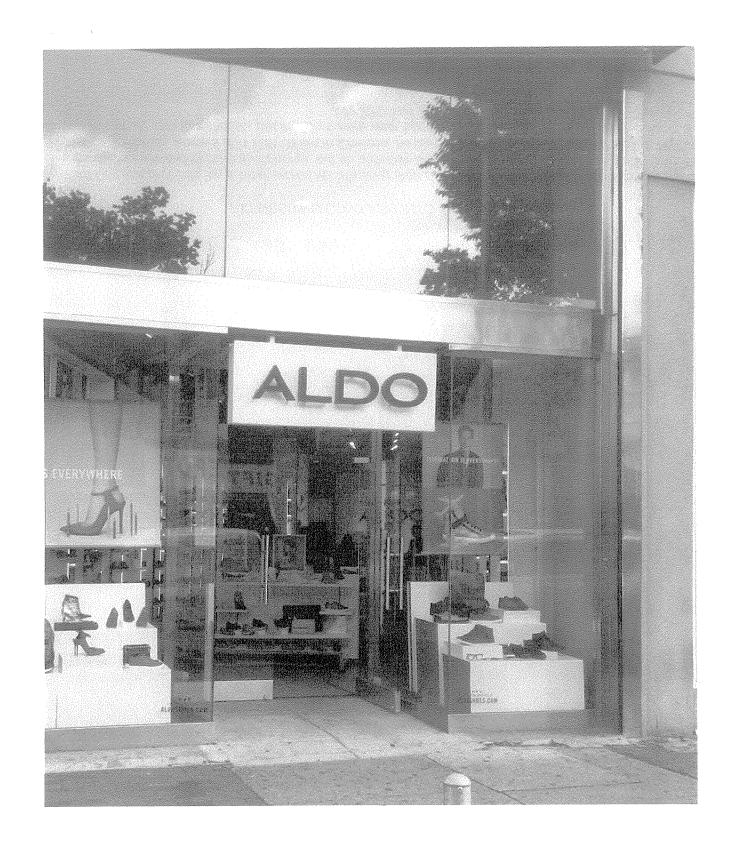
In **Harlem**, 22 of 78 stores surveyed (28%) on July 29<sup>th</sup> had open doors and ACs operating.

And in the **Midwood section of Brooklyn**, 17 of 59 stores surveyed (29%) on August 16<sup>th</sup> had air conditioners running and doors wide open.

Moreover, overall compliance with the 2008 statute doesn't seem to have changed much over the years. The percentage of open doors we found in this year's survey (21%) was virtually identical to the percentage we found in NRDC's first informal survey, completed in 2009. (That survey covered many, but not all of the same neighborhoods, so the results from the two surveys are not directly comparable.)

Intro. 850 would address the gaps identified in Local Law 38 and help achieve all of the objectives first spelled out by the Council in 2008. Beginning next June, it would close the non-science-based loophole in the existing law and instead apply the closed door requirement to all commercial establishments, regardless of size. And it would reasonably increase fines for offenders so that the penalties deter unlawful conduct and are not seen as simply a cost of doing business.

This legislation is strongly backed by the de Blasio Administration's Department of Consumer Affairs Commissioner Julie Menin. And it is being championed in the Council by Environmental Protection Committee Chair Costa Constantinides and former Chair Donovan Richards. We thank all of them for their efforts, and stand ready to work with them to ensure passage of this sensible energy-conserving, brown-out reducing, pollution-preventing legislation.



20% OF STORES SURVEYED ARE KEEPING DOORS OPEN WITH AC BLASTING:

Aldo stores, on Kings Highway near Coney Island Avenue in Brooklyn, as part of a chain with 5 or more stores in NYC, is require to comply with Local Law 38 of 2008. But its door was wide open, with AC operating, as temperature hit 93 degrees on August 16th.



EXPRESSING COLD AIR ONTO THE SIDEWALK:

New York City law prohibits large retail stores from leaving their doors open while their air conditioners are operating — a measure intended to conserve energy, cut air pollution and conserve power on days of peak demand. The Express store at 5th Avenue and 18th Street in Chelsea, as part of a chain of five or more stores in NYC, is also required to comply with this statute. But its doors were wide open, with AC operating, when temperatures soared on July 20th and 21st.

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