

New York Appellate Court Allows Challenge to New York City's Ground Breaking Climate Law to Proceed.

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Last week, a New York appellate court issued a decision that will allow one part of a legal challenge to go forward against the City's ambitious effort to curb greenhouse gas emissions from buildings over 25,000 square feet. But the court decision's language leaves ambiguity about what happens next in the litigation.

The 2019 Climate Mobilization Act, also known as Local Law 97, which took effect in January, requires owners of most buildings over 25,000 square feet, approximately 50,000 buildings, to dramatically reduce their building emissions in phases over the coming decade and beyond or face progressively steeper penalties. The law sets emissions limits based on square footage and occupancy category (i.e., commercial, residential, etc.) and ratchets those limits down over time. While the vast majority of buildings in the City are already in compliance with the emissions standards for the 2024-2029 compliance period, the more restrictive standards that will take effect from 2030-2034 will require significant and costly investments in energy efficiency, electrification and fuel conversion for many buildings.

In November 2023, a New York trial court judge dismissed a high-profile lawsuit brought by building owners challenging Local Law 97 on multiple grounds. On May 16, 2024, the First Department, Appellate Division, partially reversed the lower court, appearing to rule that Local Law 97 was "preempted" by the State's groundbreaking 2020 Climate Leadership and Community Protection Act ("CLCPA").

This ruling, technically speaking, only *reversed* the lower court's dismissal of the lawsuit, and stopped short of deciding the lawsuit in the plaintiffs' favor. But in ruling that "one could conclude" that Local Law 97 is preempted by CLCPA, the appellate court has sent a clear message to the lower court on how it might ultimately rule on the law's validity. As such, we expect the City to appeal the ruling. For now, the law remains in effect.

The appellate court affirmed the lower court's dismissal of the plaintiffs' other claims, including that LL97's penalties amounted to an illegal tax, and that the law's fines violate the due process clause of the U.S. Constitution.

We will continue to follow developments around the implementation of LL97 and the ongoing litigation. For more information, contact this advisory's author, Nick Tapert, or other members of the Environmental and Land Use Group or Real Estate Group.

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