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Temperatures in the state of Texas are rising. A recent analysis by the Texas Tribune found that the last decade saw nearly three times the number of record breaking heat recordings than in the decades prior.\(^1\) 2023 was the second hottest year on record in Texas.\(^2\) Heat waves are regularly testing the limits of our infrastructure, such as our electrical grid.\(^3\) Extreme heat is deadly,\(^4\) causing hundreds of deaths in Texas in recent years,\(^5\) and is here to stay.

One group of Texans – renters – are particularly vulnerable to the harms of extreme heat, with low-income renters most notably at risk due to dangerously deficient legal protections and the high cost of energy. As unthinkable as it sounds (given the historic extreme heat in Texas and the forecast of even higher temperatures in the future), there is no legal requirement for landlords to provide air conditioning in Texas.

This brief report is an attempt to look holistically at the issues that face renters’ access to working air conditioning in their homes during extreme heat conditions in Texas. The report first addresses the lack of uniform and effective legal requirements for landlords to provide air conditioning. Next, we describe the challenges faced by renters in repairing broken air conditioning units. Then, we investigate the high cost of air conditioning for low-income renters. Finally, we scan air conditioning requirements and challenges at different types of subsidized and income restricted housing in Texas. As this issue becomes increasingly salient, we expect that new policies, strategies, and funding approaches will emerge.
Where are Texas renters lacking AC?

In Texas, air conditioning in rental units is not required by law, but what does that look like in terms of the actual number of units without air conditioning? Approximately 54,200 occupied rental units in Texas do not have any air conditioning whatsoever. This means that over 54,000 (or 1.4% of) renter households in the state not only don’t have central air, but lack even a single room or window AC unit.

Detailed statewide data on the location of units without air conditioning in the state and within cities is not available, but the limited data that is available suggests serious income and racial inequities. In 2021, Harris County Public Health attempted to identify where county residents did not have access to air conditioning as part of the creation of an Extreme Heat Vulnerability Assessment tool. They used appraisal district data, which identifies air conditioning units that are visible from the street. This method likely undercounts the existence of wall unit air conditioning. Nevertheless, the reported absence of air conditioning is stark on the map in the eastern crescent of Houston neighborhoods that have a higher share of African American, Hispanic, and low-income residents (see Image 1).

IN TEXAS, RENTERS HAVE NO FUNDAMENTAL RIGHT TO AIR CONDITIONING
Local regulations, but are they effective?

In the absence of a state law, some local governments in Texas, such as Dallas, Houston, and Denton, do require rental units to have air conditioning, but even these local laws are far from perfect. The City of Houston’s air conditioning ordinance exempts rental properties that “provide and maintain a screen... at each exterior opening” from having to provide air conditioning. For units that are required to have air conditioning, the AC is only required to maintain a temperature that is the higher of 80 degrees or 20 degrees less than the outside temperature. That means that if the outside temperature in Houston reaches 110 degrees, the landlord is only required to maintain a temperature in the unit of 90 degrees. This is not a safe persistent interior temperature, especially for vulnerable populations like seniors and people with disabilities.
Policy recommendations to ensure air conditioning and sufficient cooling in rental units:

- Establish a statewide requirement for landlords to provide and maintain functioning air conditioning in all rental units: Even if local air conditioning ordinances are improved, the absence of a statewide regulation will continue to result in too many renters in the state falling through the cracks. Air conditioning should be required in rental units across the state. Units should be required to cool the air to a temperature of 78 degrees.

- Strengthen existing and establish new local air conditioning regulations so that they ensure sufficient cooling: Local governments nearly defeat the purpose of air conditioning regulations when they allow exceptions for rental units that don’t provide air conditioning. Rental unit air conditioning requirements at the state and local levels should require air conditioning with no exceptions. Furthermore, cooling standards should be improved to require the system to be able to sustain a maximum inside temperature standard of 78 degrees.
Texas renters who do have air conditioning in their home still face weak legal protections to ensure that their landlord maintains their AC in good working condition. Although there is no statewide requirement for rental units to have working air conditioning, a lease agreement may include the provision and maintenance of an air conditioning unit. Additionally, some attorneys argue that non-functioning AC in extreme heat conditions meets the Texas Property Code’s threshold for the “landlord’s duty to repair or remedy” if “the condition materially affects the physical health or safety of an ordinary tenant.” However, as currently written in statute, it is not clear that it is a guaranteed protection. A tenant should contact their local legal aid for advice on pursuing “repair or remedy” if they believe that their landlord is legally obligated to provide working air conditioning.

If a landlord who is required to provide working air conditioning defers or refuses the repair of a tenant’s AC, what else can a tenant do to ensure that they’re not stuck in unsafe heat conditions? A tenant may make a request with the local code inspection authority. Unfortunately, the effectiveness of local code inspections to remediate deficiencies at rental properties in a reasonable timeframe is not guaranteed. Code inspectors often do not make it to the property immediately, and even when a citation is delivered, landlords often have long windows of time and considerable leeway on making repairs before a case is escalated. Much is left to the discretion of the individual code inspector. In the short term, a citation may only result in a fine or even just a warning. In some situations, code inspectors may provide multiple warnings before escalating the case. In the meantime, the tenant suffers without air conditioning.

The effectiveness of code inspection to address air conditioning repair needs varies from city to city, agency to agency, and even inspector to inspector. For
example, in the summer of 2023, inspectors from the City of Dallas indicated that they respond to air conditioning repair complaints within 24 hours and that a citation results in a $650 per day fee until repaired.  

Many tenants fear that their landlord will retaliate against them for pursuing repair or remedy options or calling a code inspector. According to Texas law, a landlord may not retaliate against a tenant for pursuing remedy and repair or contacting a code inspection authority for a period of six months. The landlord is restricted from filing an eviction on these grounds, depriving the tenant of the use of the premises, raising rent, or terminating the lease. However, state retaliation law does not protect tenants against landlords finding other lease violations to file a bad faith eviction suit, and provides no protection from retaliation after six months. Unfortunately, tenants are justified in their concern over retaliation.

**Policy recommendations to ensure air conditioning repairs in rental units and reduce tenant vulnerability to retaliation:**

- *Clarify the Texas Property Code to establish that a lack of air conditioning in extreme heat conditions does materially affect the physical health and safety of an ordinary tenant.* Remove the ambiguity from the Texas Property Code, Sec. 92.052, “Landlord’s Duty to Repair or Remedy.”
- *Require landlords to provide alternative accommodations for a tenant if repairs take more than five calendar days.* Alternative accommodations may include a temporary air conditioning unit in the apartment, or temporarily relocating the tenant to another unit until repairs are completed.
- *Establish a tenants’ right to withhold rent until air conditioning in the rental unit is repaired.*
- **Update the “Tenants’ Repair and Deduct Remedies” section of the Texas Property Code.** Allow tenants to "repair and deduct" a repair to AC regardless of whether or not such repair is outlined in a lease agreement. Allow tenants that live in areas without City or County code inspectors to "repair and deduct." Allow tenants to obtain a contractor for the "repair and deduct" process that is not necessarily listed in the white pages of telephone directories or advertisement sections of local newspapers.

- **Improve local code inspection effectiveness.** Require inspectors to respond to air conditioning related complaints within 24 hours when the temperature is above 90 degrees. Provide detailed guidance to inspectors to ensure that air conditioning repair violations are escalated quickly if not addressed and to limit leniency and individual judgment calls. Establish aggressive fines and fees for landlords that fail to repair air conditioning.

- **Remove the six month limit against landlord retaliation.** Reform the Texas Property Code, Sec. 92.331, “Retaliation by Landlord,” by removing the six month limit against retaliation.

- **Establish Just Cause eviction protection for tenants in Texas.** Limit landlords from being able to deny a lease renewal unless the tenant has made a material breach of the lease. This will help protect tenants from retaliation.
As Texas summers continue to trend hotter and the cost of natural gas increases, low-income renters are increasingly facing the burden of rising energy costs to cool their homes. The Texas Energy Poverty Research Institute (TEPRI) surveyed Texans and found that 27% of respondents report turning off their AC for periods of time to save money. Additionally, 35% reported setting the temperature to an uncomfortable level in summer to reduce their electricity bill and save money. TEPRI found that these activities were the most prevalent among the lowest income households, the majority of whom rent in Texas.

Two approaches are required to reduce energy costs for low-income renters: providing assistance to help pay energy bills, and improving the energy efficiency of rental units.

Energy payment assistance

Texas’ Comprehensive Energy Assistance Program (CEAP) provides assistance with paying energy bills to households at or below 150% of poverty level, or at or below 60% area median income, with funds passed through the state program administrator to local subrecipients for distribution. However, CEAP funds do not stretch nearly far enough to help the low-income Texans who need assistance. In 2022, TDHCA reported that CEAP funds assisted 225,267 households. There are 904,814 households in Texas making less than 30% of area median income alone, not including those that make between 30-60% of area median income. Recently, Texas lawmakers have argued that the federal Low Income Home Energy Assistance Program (LIHEAP), which funds Texas’ CEAP, needs to be expanded to meet the demand from low-income Texans that need help.
LIHEAP/CEAP funds do not provide long-term support or solutions for reducing energy costs. However, increasing funding for CEAP, both at the federal level and through state and local funding contributions, will provide a critical lifeline for low-income tenants who need help with energy costs now.

LIHEAP/CEAP is underfunded, but cities can explore innovative approaches to helping low-income households with utility bills. The City of Austin’s Plus 1 program collects voluntary contributions, for example on a special donation line on paper utility bills that are sent out to Austin Energy customers. The program then distributes funds to subrecipient social service nonprofits to deliver to households in need of assistance. Through voluntary donations, the Plus 1 program attempts to fill the gap between federal funding and local need.

Improving rental unit energy efficiency

While it is important to provide bill payment assistance to low-income households in need, Texas can also work toward lower energy bills by working to decrease energy inefficiency at rental units and thus costs to tenants. One approach to accomplishing this is by improving energy efficiency requirements for rental units. Research has shown that rental properties on average consume 20% more energy per square foot than owner-occupied properties, due to a “split incentive problem” where neither landlords nor renters have aligned incentives to improve energy efficiency in a rental unit. Increased energy efficiency standards at the state or local level will help to ensure that renters are not paying more for air conditioning due to energy lost through inadequate insulation and air leakage. In the 2023 session, the Texas Legislature passed a bill, SB 2453, that would have improved energy efficiency standards for all new construction in the state. The bill had wide support and no opposition, but was ultimately vetoed by the Governor as punishment of the legislature for an unrelated fight over property taxes.

Texas also has a Weatherization Assistance Program (WAP) that assists
qualifying low-income households to conduct energy audits and install weatherization materials to improve energy efficiency. This program is funded through the federal Low Income Home Energy Assistance Program (LIHEAP). As with LIHEAP’s direct payment assistance passed through CEAP, available funding does not match the existing need. In 2022, the program served 2,547 households in Texas.³²

Policy recommendations to ensure that low-income renters can afford their energy bills in summer heat conditions:

- **Increase funding for energy bill assistance for low-income households:** The federal government should increase funding to LIHEAP, especially for southern states, but state and local governments should also contribute funding for this purpose.
- **Ensure that eligible households are getting the information they need about available resources to reduce energy bills.**
- **Set statewide and local minimum energy efficiency standards and incentives for residential rental properties.** Use resources like the Rocky Mountain Institute’s Efficiency Standards for Rentals toolkit³³ and rental energy efficiency standards in places like Burlington, VT and Boulder, CO as models. It may also be useful to explore programs that incentivize rental property owners to participate in improving energy efficiency at their properties voluntarily.
SUBSIDIZED HOUSING IS NO GUARANTEE OF AIR CONDITIONING IN TEXAS

What about air conditioning at subsidized or income restricted properties? Air conditioning requirements exist for some types of income restricted housing, but there is substantial room for improvement here also, especially in regard to public housing.

Public Housing

The U.S. Department of Housing and Urban Development (HUD) does not require air conditioning in public housing. Whereas requiring all new construction and substantial rehabilitation of subsidized units to have air conditioning in programs like LIHTC for new income-restricted housing production will help ensure that a lack of AC at income-restricted units diminishes over time, much of the public housing stock in Texas is older and many properties do not have air conditioning. The cost of retrofitting these older units can be very expensive. Simply adopting new rules that require air conditioning at older public housing units does not address the cost of implementing such a rule.

Advocacy to pressure local housing authorities to adopt an air conditioning requirement and fund it appears to be the best way to ensure that this issue is addressed. Texas housing authorities have slowly begun to fund the universal provision of air conditioning in public housing units. In 2019, the San Antonio Housing Authority pooled $1.5m from the authority, the City of San Antonio, the San Antonio Housing Trust, and a local philanthropist to provide air conditioning to all public housing residents served by the authority. In 2023, the Houston Housing Authority announced that it would be receiving over $2m from HUD for its Heat Relief Initiative to provide air conditioning to every resident that the authority serves.
Housing Choice Vouchers and Project Based Vouchers

Public housing authorities (PHAs) are required to conduct annual inspections of Housing Choice Voucher (HCV) and Project Based Voucher (PBV) units. In these inspections, they are required to confirm that units meet basic housing quality standards (HQSs), including “thermal environment” standards. The standards require units to provide a thermal environment that is “healthy for the human body.” Similar to Houston’s AC ordinance, the standards require that if an AC unit is provided that it must provide “adequate” cooling and be in proper operating condition. However, HUD rules do not require air conditioning to be present. Where AC is present, the standards leave it to PHAs to determine what constitutes adequate cooling and a healthy living environment.

This presents a problem. Low landlord participation in the HCV program is already a well known issue. PHAs that enact tougher air conditioning requirements run the risk that they will further disincentivize landlords from accepting HCV recipients and further reduce the available stock of rental units to these households.

Low-Income Housing Tax Credit Program

The Low-Income Housing Tax Credit (LIHTC) program produces over 70% of the income-restricted housing in the state of Texas. Air conditioning is a required amenity at Texas Low-Income Housing Tax Credit (LIHTC) properties.

General local or state subsidy

Simply put, all local or state subsidies, incentives, and letters of support for the construction, rehabilitation, and preservation of low-income housing should come with a requirement for air conditioning.
Policy recommendations to ensure that tenants in subsidized or income restricted units in Texas have access to air conditioning:

- Every PHA in Texas should make fundraising for universal air conditioning in public housing units a top priority. The San Antonio Housing Authority and Houston Housing Authority show that it can be done. All other PHAs in Texas should follow suit and make this a priority. Vulnerable, low-income residents accessing public housing should have air conditioning by right.

- Implement meaningful air conditioning requirements for HCV properties at the PHA level, and explore approaches to incentivizing landlords participation in the program to counter any perceived disincentive to participation: Texas PHAs should establish strict requirements for air cooling at participating HCV properties and units. IF this creates a disincentive for landlord participation, PHAs should explore innovative landlord participation incentives, up to and including monetary incentives. PHAs across the country have used innovative approaches to incentivizing landlords to participate in the HCV program.

- Require air conditioning as a condition for receiving any state or local subsidy or benefit for the production of income-restricted housing.


7. HUD does not provide data on the number of rental units that lack central air conditioning but rely on wall units or single room air conditioning as their sole source of air conditioning.

8. As first reported in July 2023 by Houston Landing: Bruess, E. (2023,


10. Another limitation pointed out by Harris County Public Health is that this method does not capture whether residents are choosing not to use their air conditioning as a cost-saving measure.


13. 78 degrees is the cooling temperature that the Electric Reliability of Texas (ERCOT) recommends that Texas households turn their AC to conserve energy. Electric Reliability Council of Texas. (2022, May 13). Statement by Electric Reliability Council of Texas Interim CEO, Brad
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https://www.jchs.harvard.edu/sites/default/files/media/imp/harvard_jchs_carliner_research_brief.pdf


U.S. Department of Housing and Urban Development, Housing Choice

37. Ibid., Chapter 10-7.


41. In the 2023 Texas legislative session, Rep. Bernal proposed a bill (HB 191) that would seek to increase the share of low-income units in Texas that have air conditioning by giving points to LIHTC applicants who can show that all of the rental units that they own have air conditioning. The bill failed to pass during the session.