

DOING OUR FAIR SHARE, GETTING OUR FAIR SHARE

**REFORMING NYC'S SYSTEM FOR ACHIEVING
FAIRNESS IN SITING MUNICIPAL FACILITIES**



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PREFACE: DOING OUR FAIR SHARE, GETTING OUR FAIR SHARE

Fairness is a good principle for building a city – but not a simple one to achieve.

We all expect our fair share of basic needs and public goods. New Yorkers in every community should have roughly equal access to schools, parks, and libraries. We would not deny any neighborhood a police station, a firehouse, or an elementary school because the real estate was too expensive.

By the same token, we should all expect to **do** our fair share to solve problems and address the challenges of sharing a city. “Fair Share” does not just mean keeping things out of neighborhoods where they are already over-concentrated. It also means putting them in where they are under-represented.

No one likes the smell or the traffic that comes with a waste transfer station. But every neighborhood produces garbage, so it should be fairly managed, rather than over-concentrated in a small number of neighborhoods (especially when those neighborhoods are disproportionately low-income communities of color).

In practice, we can’t always achieve perfect fairness. Central Park is closer to some neighborhoods than others. There are some facilities – like a wastewater treatment plant, or a museum – that cannot practically be distributed equally to every neighborhood. A marine transfer station has to be located on the waterfront. And it is not always clear what the unit of fairness is – a neighborhood, a community board, a borough?

Still, fairness is a critical first-order principle for distributing public facilities within a democracy. That’s why the 1989 New York City Charter Revision Commission developed NYC’s “Fair Share” rules, and established a process for considering fairness in siting municipal facilities through land use actions, leases, or contracts.

Unfortunately, NYC’s “Fair Share” rules aren’t working as they were intended.

- Low-income communities and communities of color still see far more than their Fair Share of local unwanted land uses (“LULUs”).
- Data on the location and concentration of existing facilities is too difficult to access. As a result, there is no way to tell a genuine Fair Share claim from a simple effort to justify NIMBYism (“Not in My Back Yard”).
- Too often, community residents – and even community boards, who have an official role in the process – are not aware of public siting actions that require a Fair Share analysis. Many Fair Share Statements are never made public.
- The use of emergency procurement processes to site certain contracted facilities has meant that many siting decisions that were intended to go through the Fair Share process have been exempted from it completely, even in districts with the highest concentrations.
- There is no consequence for City agencies for implementing unfair sitings. It does not take any more work, or require any additional findings. No extra mitigation is required. So unfair sitings often remain the path of least resistance, because the land is less expensive, or the community is perceived to be less powerful.

The New York City Council is committed to strengthening the Fair Share process, to achieve the goals of the 1989 Charter Revision Commission, and to establish more fairness in our city. This report lays out a set of fair, practical, concrete steps that New York City should take.

With these recommendations, New Yorkers in every neighborhood can count on more fairness – so we can all be more likely to do our Fair Share, and to get our Fair Share, too.

EXECUTIVE SUMMARY

A basic principle of a fair city is that, to the greatest extent possible, all communities should have their fair share of municipal facilities – whether those are schools, libraries, shelters, parks, prisons or waste transfer stations. While these facilities serve diverse purposes and needs, they are all necessary for a city's health and prosperity. We all expect access to basic public services like education, fire protection, and sanitation. And we all have a role to play in housing the infrastructure that makes it possible for the city to function (e.g. power plants) and meet its obligations (e.g. homeless shelters).

Unfortunately, in New York City (and most other places as well), facilities that bring environmental burdens to communities like waste transfer stations, sometimes referred to as "local unwanted land uses" or "LULUs" – are disproportionately located in low-income communities of color. At the same time, some wealthier – and whiter – communities often have less than their fair share of such facilities.

Recognizing this pattern of unfairness, the 1989 Charter Revision Commission added a procedure colloquially known as "Fair Share" to the City Charter to govern how the City sites facilities that it operates, either directly or through contracts with third-party service providers. Fair Share was established to require the City to plan its facility sitings in a thoughtful, deliberative manner that takes community input seriously and aims – at least in principle – to avoid the uneven distribution of these essential City facilities and services.

If the Fair Share system were functioning as intended, City facilities would be more evenly distributed – or at least no less evenly distributed – than they were in 1989, when the system was adopted.

Unfortunately, Fair Share has not worked as the Charter Commission intended. In many instances, the City's facilities and services are not more evenly distributed – in fact, their distribution has become less fair since 1989. This report explores the history of Fair Share, and how it functions in both theory and practice, and provides an overview of the problems with how Fair Share currently functions.

Key Issues:

- Fair Share Statements – which exist to explain how a siting is fair or to justify why an unfair siting is either appropriate or unavoidable – are generally inaccessible to the public.
- The City does not disclose enough data about the current distribution of facilities and comparisons between communities for the public debate to be well-informed.
- The Citywide Statement of Needs, intended to be a forward-thinking planning document, does not contain enough detail to be useful, nor does it contain most sitings that are subject to Fair Share.
- There is insufficient opportunity for community input in the siting of contracted facilities. This is a problem especially in communities that are already over-concentrated with particular facility types, often exacerbating mistrust in local government and NIMBY ("Not in My Back Yard") sentiments, as communities feel ignored or even intentionally slighted by City agencies.
- Some City agencies rely on emergency contracting as a matter of routine in a way that avoids the Fair Share review process altogether, which allows for the siting of facilities in overconcentrated districts.
- There is no consequence to City agencies for implementing sitings that exacerbate the unfair distribution of facilities. It does not take any more work, or require any additional findings. So unfair sitings often remain the path of least resistance, because the land is less expensive, or the community is perceived to be less powerful.
- The Fair Share Criteria have not been updated since the 1990s and are outdated for the 21st century and the particular policy priorities and challenges of today.

Drawing on this analysis, the report proposes a comprehensive package of reforms that members of the City Council will introduce as legislation to improve the transparency, planning, community input, and effectiveness of New York City's Fair Share system.

Recommendations:

- **Increase transparency** so that members of the public can easily review Fair Share Statements and objectively compare the concentration of any kind of facility between different communities. Posting Fair Share Statements online, providing an annual ranking of the concentration of facilities across communities, and providing an interactive online map will help to empower the most overconcentrated communities, and also reveal the weakness of Fair Share claims that are not supported by data.
- **Update the Fair Share Criteria** (which have not been updated since they were first drafted in 1991) to better reflect the needs of a changing city, and to provide agencies with both clear guidance and provisions that they must follow.
- **Reform the Citywide Statement of Needs** to be a more thorough and useful planning document that requires and encourages proactive conversation about how to achieve fairness in siting City facilities.
- **Prohibit City agencies from siting new facilities in the most over-concentrated communities**, through either regular or emergency sitings, unless the agency can pass a much higher bar than standard Fair Share analysis requires (e.g. to show that the siting meets the specific needs of the host community).

With these reforms, New York City can restore the vision that animated the 1989 Charter Revision, and move toward a fairer city for all our neighborhoods.

BACKGROUND

State and local governments deliver an extremely broad array of services: from parks to parking garages, subway stations to waste transfer stations, senior centers to recycling centers, schools, police precincts, fire houses, and much more. These services are constantly evolving, with the creation of new public services (e.g. bike-share, universal pre-kindergarten), growing populations and demographic shifts that require new facilities (e.g. schools, parks), and evolving environmental conditions (e.g. flood protection).

In locating the facilities that provide these services, governments at every level should seek to achieve both efficiency and equity. Balancing these concerns can be tricky. Land costs vary widely from neighborhood to neighborhood. Vacant land is rarely available in the right locations, and is often especially scarce in the densest areas, where new infrastructure may be needed most. Some uses need to be located in particular places (e.g. public beaches can only be on the waterfront).

Still, as a general principle, the public rightly expects the government to allocate services as equitably as possible, without entirely neglecting cost efficiency. Every community deserves a library, but we do not expect neighborhood branches to be as grand as the central branch.

This expectation of fairness covers facilities that most communities want located nearby (e.g. parks and libraries), and also those that pose harms or burdens (sometimes referred to as LULUs). Just as every community expects their Fair Share of public services, no one community should be expected to host an outside share of services or facilities that are necessary to the city as a whole, but which may pose health risks (e.g. increased asthma rates from truck traffic near waste transfer facilities), or be undesirable at the local level (e.g. the smell of a sewage treatment plant).

Using distributional fairness as a guiding principle for the provision of all public facilities and services – regardless of whether they are perceived as benefits or burdens (and with recognition that this can be subjective) – can help ensure that we have room for the essential services that allow our city to function, that our communities have equal access to those services, and that no one community or population bears an unequal burden within that framework.

Unfortunately, in New York City and throughout the United States, low-income neighborhoods and communities of color have persistently been treated unfairly in the siting of public facilities – both in the under-provision of desirable services, and in the over-concentration of LULUs.¹ This distributional unfairness has arisen for a range of reasons:

- Deliberate discrimination, as was the case with which locations were chosen for neighborhood parks in the 1930s;
- Residential segregation, a result of discrimination in the housing market, forces people of color into neighborhoods seen as undesirable;
- “Path of least resistance” urban planning, in which it is presumed to be easier to site facilities that are harmful to communities like waste transfer stations in communities that already have a high concentration of that facility type or that are perceived as having less political power;
- Lower real estate prices in low-income neighborhoods makes the siting of facilities nearby cost efficient;
- Some facilities must be sited in areas that have certain geographic characteristics, transportation access, or zoned land uses; and
- For social service facilities, some neighborhoods may have a greater need for certain kinds of services.

In 1989, the New York City Charter Commission responded to these concerns by adopting City Charter sections 203 and 204, creating a policy framework colloquially known as Fair Share to require the City to “consider the relative fairness of burdens – as well as benefits – during the land-use process, much as the environmental laws of the late 1960s and 1970s required governments to consider environmental factors without mandating specific results.”²

Fair Share is of a piece with the Commission’s general goals to provide “(1) more attention to fairness among communities; (2) more attention to planning; and (3) opportunities for decentralizing land-use decision-making.” The Commission focused on providing process fairness by bringing more advance notice, transparency, deliberation, and community input to the planning process – rather than on forcing outcome fairness (however one might define it). However, as Commission Chair Fritz Schwarz testified before the City Council in 2011: “We chose a process remedy but our goal was a better distributional equity.”³

NEW YORK CITY’S CURRENT FAIR SHARE FRAMEWORK

Charter Section 203 requires the City Planning Commission (CPC), following a proposal by the Mayor, to promulgate rules establishing criteria for the siting of new City facilities, and expansion, reduction, or closing of existing facilities, that consider the fair distribution of facilities among communities as well as communities’ needs for services, the efficiency of service delivery, and the social and economic impact of facilities on their surrounding areas. These criteria are commonly referred to as the “Fair Share Criteria” (though the Charter itself never uses this term).

Section 204 is focused on giving elected officials and the public advance notice of City facility sitings, expansions, reductions, and closings, and the data and context to judge the fairness of these sitings. It requires the Mayor, in conjunction with the Department of City Planning (DCP), the Department of Design and Construction (DDC), and the Department of Citywide Administrative Services (DCAS) to produce an annual Citywide Statement of Needs (SON), which must identify all sitings subject to the Fair Share Criteria planned for the next two fiscal years and explain why the specific siting was chosen. Before submitting their own departmental statements of need to the Mayor, agencies are required to consult with the district needs statements and statements of budget priorities prepared by community boards. Community boards and borough presidents may comment on the SON within 90 days of its issuance, and borough presidents may propose alternate locations for any proposed siting within their borough.

Section 204 also requires City agencies to issue what have come to be known as “Fair Share Statements” when they propose to site specific City facilities (whether they have been listed in the SON or not). These statements are required to describe how the proposed action satisfies the Fair Share Criteria, and whether it is consistent with the most recent SON, or any written statements from borough presidents or community boards in response to the SON.

To contextualize the Statement of Needs and Fair Share Statements, Section 204 also requires the City to issue a map and “gazetteer” of explanatory text including the location and use of all City-owned property, final commitments regarding future use of City-owned property, health and social service facilities operated by or on behalf of the state or federal governments, and transportation and waste management facilities operated by or on behalf of public entities.

With Sections 203 and 204 formally adopted in 1989, the CPC promulgated the first Fair Share Criteria in December 1990, to take effect in July 1991.

Figure 1:
Charter Section 204 Timeline

Dates Specified by the Mayor
Agencies consult community district needs statements and statements of budget priorities in preparing department statements of need
Mayor, DCP, DDC, DCAS receive departmental statements of need and prepare SON
November 15
Mayor submits the SON and map and gazeteer of City facilities to the Council, borough presidents, borough boards, and community boards
November 15 – February 13
Community boards make SON available to the public and hold a public hearing
Community boards and borough presidents submit comments to the Mayor on the SON
Borough presidents can propose alternative locations to any proposed sitings within their borough
February 13
Applications to DCP for new City facilities required to describe consistency with SON and community board and borough president comments on SON
Applications for new facilities not listed in SON must be submitted to borough presidents, who have 30 days to propose an alternative site
September 17
Mayor’s Management Report, containing a review of the implementation of SON, is submitted to the public and the Council

SITING CITY FACILITIES IN NYC

All City facilities are subject to Fair Share, but what is a city facility? Charter Section 203 points to facilities that are “used or occupied to meet city needs,” located on land owned or leased by the City, or “operated by the City or pursuant to a written agreement on behalf of the City.” The adopted Fair Share Criteria are more specific, indicating that Fair Share applies to facilities on City-owned or -leased land that are larger than 750 square feet and non-City-owned or -leased facilities that are used primarily for programs that derive at least 50 percent of their budget and more than \$50,000 from contracts with the City. The Criteria also refine Section 203’s reference to expansions and reductions of existing facilities, clarifying that the change in physical size must equal at least 25% of the existing floor area in order to trigger a Fair Share review.

These descriptions may not be very useful to non-lawyers or those who don’t enjoy perusing the City Record. So what is a City facility, in layman’s terms? Just about every physical space larger than a one-bedroom apartment that plays a role in delivering City services – parks, jails, homeless shelters, substance abuse rehabilitation centers, waste transfer stations, school bus and garbage truck garages, and office space for every variety of City agencies – are supposed to be subject to Fair Share.

The types of facilities that are subject to this process are defined by the City’s Fair Share Criteria, a document that was developed in 1991 and has not been updated since. Certain facilities, like public housing and public schools, are not subject to Fair Share because the agencies that control their siting – the New York City Housing Authority and the New York City School Construction Authority, in this example – are creatures of State law.ⁱ

Three types of sitings require New York City agencies to produce Fair Share Statements:

- Selection or acquisition of sites for City facilities, other than office space, that must go through the Uniform Land Use Review Procedure (ULURP);

Just about every physical space larger than a one-bedroom apartment that plays a role in delivering City services – parks, jails, homeless shelters, substance abuse rehabilitation centers, waste transfer stations, school bus and garbage truck garages, and office space for every variety of City agencies – are supposed to be subject to Fair Share.

ⁱ Agencies and authorities that DCP identifies in the Fair Share Guide as being exempt from Fair Share include the School Construction Authority, the Health and Hospitals Corporation, the New York City Housing Authority, the New York City Transit Authority, and the City University of New York.

- Contracts with private providers and reductions, expansions, and closings of existing City facilities, through statements to the Mayor required by Article 9 of the Fair Share Criteria.

ULURP / Land Use Actions

Under Charter Section 197-c, the City triggers ULURP whenever it wishes to acquire real property, except office space, "by purchase, condemnation, exchange, or lease." ULURP requires that the local community board, borough president, the CPC, and the City Council all receive an opportunity to issue a recommendation on a proposed 197-c siting. The recommendations of the community board and borough president are advisory in this process. In addition to the normal application materials required by DCP, the City must submit a Fair Share analysis of the site and its planned use. The analysis, to be prepared jointly by the Department of Citywide Administrative Services (DCAS) and the agency that intends to use the site, must describe both how the site's selection and planned use satisfy the Fair Share Criteria and how comments from community boards or borough presidents during pre-ULURP consultations or in response to the Citywide Statement of Needs were considered.ⁱⁱ

Charter Section 195 / City Leases

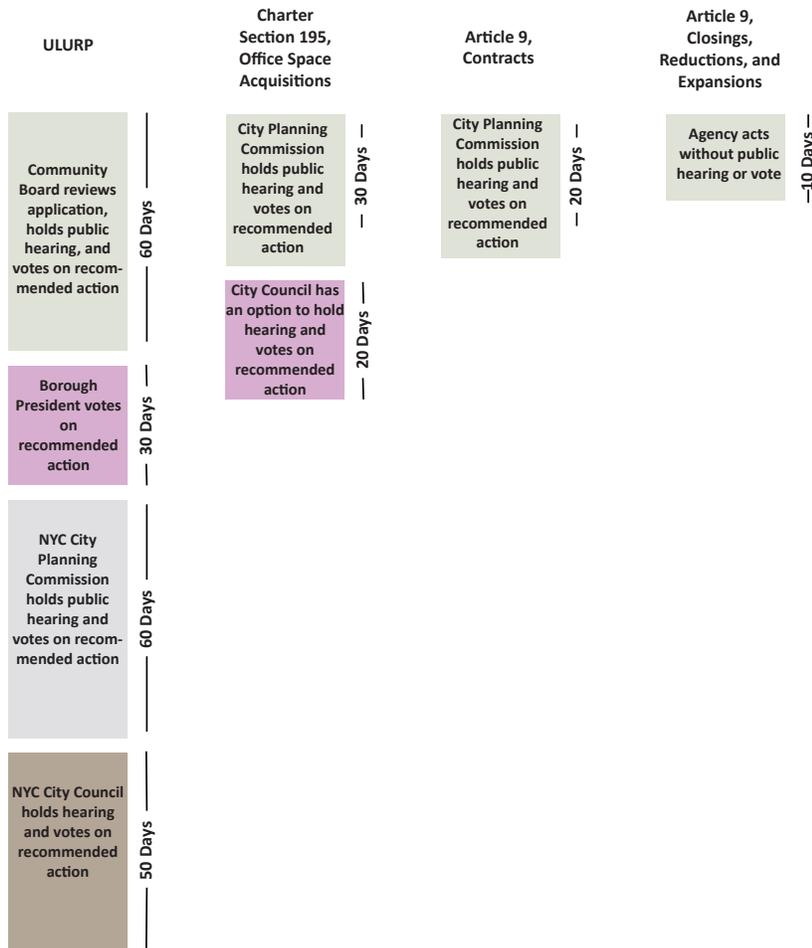
Charter Section 195 requires a greatly simplified land use procedure for acquisition of office space by the City. For acquisitions that fall under Section 195, the agency seeking to acquire the space must file a "notice of intent to acquire" with DCP, who then forward the notice to the relevant community board and all borough presidents. Within 30 days of the filing of this notice, the CPC must hold a public hearing on the acquisition, which, if approved, may be overturned within 20 days by a vote of two-thirds of the City Council.

Article 9 of the Fair Share Criteria / City-Contracted Services

Article 9 sitings, so called because they are covered by Article 9 of the Fair Share Criteria, include expansions, reductions, and closings of existing facilities and new or expanded facilities that result from City contracts with service providers. Contracted sitings include most day care centers, homeless shelters, private waste transfer stations, and many other types of facilities that are essential to our city's daily operations. An Article 9 Fair Share Statement, which explains how the Fair Share Criteria were applied to the siting, must be sent to the Mayor, the Director of DCP, and the relevant community board and borough president.⁴ Since Article 9 sitings do not go through a public review process like ULURP that includes advance notice and public hearings, the only opportunity for public comment is a contract hearing, which is noticed in the City Record 10 days before it is due to take place and may be canceled if no member of the public registers their intent to testify. DCP recommends that agencies notify the relevant community board of the siting as early as possible before the Article 9 Fair Share Statement is submitted. DCP also recommends that agencies include the Fair Share Criteria in their requests for proposals (RFPs) when soliciting bids on a contract that would result in the establishment of a new City facility, but the extent to which agencies do so is entirely at their discretion.

ⁱⁱ The requirement that DCAS serve as a co-applicant appears to be a matter of long-standing City policy rather than a requirement of either the Charter or the Fair Share Criteria.

Figure 2: Opportunities for Review in current Fair Share Framework



*All public hearings require notification to the public, Community Boards, Borough Presidents, and City Council Members. Fair Share Statements are required to be included in all applications (Article 9 sitings require Fair Share Statements to be mailed to the Community Board, Borough President, CPC, and City Council)

The Fair Share Criteria

The Fair Share Criteria (see Appendix 2), originally promulgated by the CPC in 1991, instruct agencies to consider a facility’s compatibility with its surroundings and other nearby City facilities, potential negative impact on the neighborhood, and consistency with various planning documents – most importantly the Statement of Needs and borough presidents’ responses to it, but also 197-a plans, community board statements of need, and other documents. Agencies are also instructed to distinguish between facilities that only serve one neighborhood or community and facilities that have a broader geographic reach. For facilities meant to serve a neighborhood rather than regional need, agencies are instructed to consider the community need for the facility, including relative need compared to other communities, and accessibility to the population the facility is meant to serve. Importantly, the Fair Share Criteria require agencies to consider all facilities in a community – not just City facilities but also comparable state, federal, and private ones.

The Criteria also require agencies to consider both intra- and inter-community equity. The primary focus of a Fair Share analysis is the area within 400 feet, or a one-to-two block radius, of a proposed siting, since it is reasonable to assume that this is the geography that would be most impacted by a siting. The secondary focus is the area within one half-mile of the proposed siting. Finally, agencies are also required to consider the community district in which the proposed siting is located.

Community districts are a useful unit of analysis for evaluating distributional equity because they often share common characteristics, are served by community boards that play a Charter-mandated role in the land use process, and are roughly the same size, in terms of population.ⁱⁱⁱ

While borough equity – the concept that burdens and benefits should be more or less equally shared among the five boroughs, adjusting for the differences in their population sizes and geographies – is also a valid way of thinking about distributional equity, it generally does not play a major role in Fair Share analyses.

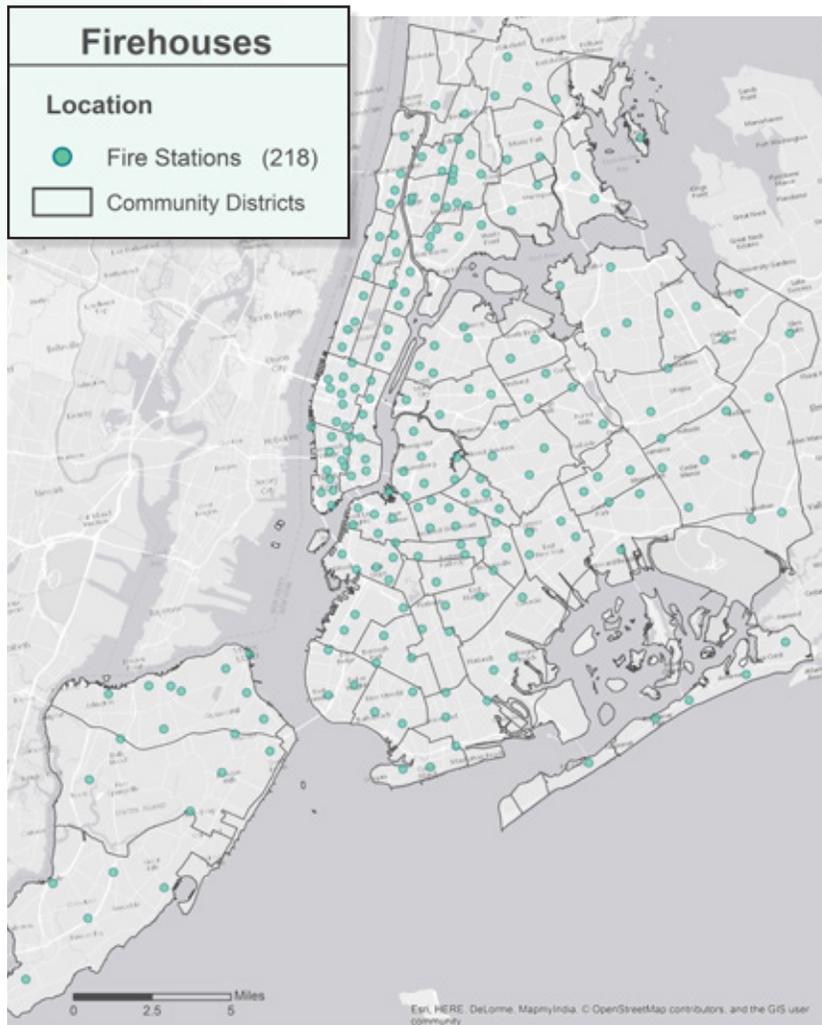
In the case of residential facilities – which includes correctional facilities, nursing homes, group foster homes, inpatient mental health treatment centers and inpatient chemical dependency treatment centers, homeless shelters, and transitional housing – the Criteria require agencies to apply stricter scrutiny to sitings in

ⁱⁱⁱ Several community districts that are under-sized, in terms of population, are grouped together by the U.S. Census Bureau and, for the purposes of having the most up to date analysis in this report, are also grouped together at various times in this report. They are Bronx CDs 1 and 2, Bronx CDs 3 and 6, Manhattan CDs 1 and 2, and Manhattan CDs 4 and 5.

community districts with a high ratio of “residential beds” to population (defined in terms of beds per 1,000 residents, which allows for comparisons between communities of different sizes by adjusting for population). This stricter scrutiny includes explaining whether alternative sites were considered and, for alternative sites in community districts with lower beds-to-population ratios, if those sites would be considerably more expensive to build or operate or would impair service delivery. To guide the application of this portion of the Criteria, the CPC requires DCP to publish an annual index of the beds-to-population ratio for each community district, inclusive of City, State, federal, and private facilities. Although the Criteria only require alternative site analysis for proposed sitings in communities with high beds-to-population ratios, DCP’s “Fair Share Criteria: A Guide for City Agencies” suggests its use for all sitings.⁵ The Criteria do not require the production of or consultation with any other kind of density or volume index, such as one meant to measure the distribution of public safety resources or volume of waste.

ASSESSING FAIR SHARE

Figure 3: FDNY Firehouses by Community District, 2017



It has been more than 25 years since the Fair Share Criteria were first adopted, and in that time little attention has been paid to how well the required processes are fulfilled, and whether the Fair Share process has met its goals of either furthering the fair distribution of City facilities or providing a more deliberative, transparent planning process.

In April 2011, the City Council held an oversight hearing of the Subcommittee on Landmarks, Public Siting, and Maritime Use titled “Fair Share after 20 Years,” chaired by Council Member Brad Lander.⁶ Among those who testified was Fritz Schwartz, Chair of the 1989 Charter Revision Commission and primary author of Charter Sections 203 and 204. Mr. Schwartz testified that, in adopting the Fair Share provisions, **“we chose a process remedy but our goal was a better distributional equity.”**⁷

A look at five sets of facilities – fire houses, libraries, parks, waste-transfer stations, and residential bed facilities – shows that the city **can** broadly achieve distributional equity (as we do with fire houses), and that we can set goals to address inequity (as we have done with parks, and are beginning to do with waste). But it also shows that race and neighborhood continue to matter. Waste transfer stations remain highly concentrated in communities of color. And residential beds are not only concentrated in low-income communities and communities of color – but have actually gotten more concentrated since the Fair Share system was adopted in 1989.

Fire Houses

The Fire Department of New York City (FDNY) provides all New Yorkers with critical fire protection, technical rescue, and response to hazards and emergency medical services across all five boroughs of New York City. FDNY Fire Houses are distributed relatively evenly through New York City, especially considering population density:

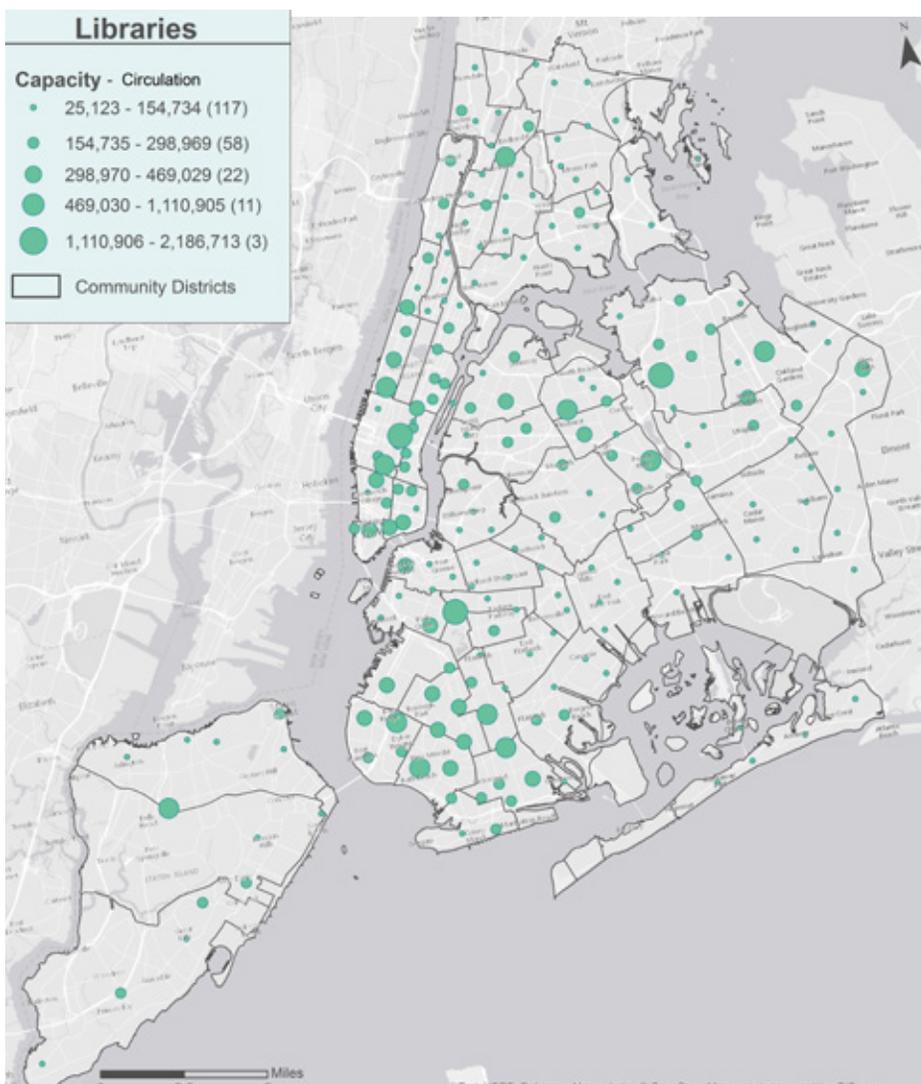
As a result, response times are broadly equitable, as the NYC Independent Budget Office found in a 2016 analysis: 3.6 minutes for Brooklyn, 4.2 minutes for the Bronx, 4.2 minutes for Manhattan, 4.4 minutes for Queens, and 4.5 minutes for Staten Island. Community districts in Staten Island and the Rockaways are home to more fire companies per capita than most other districts, due in part to the larger geographic areas they have to cover. To the extent that there is variation

in response time, the IBO found that it is roughly correlated with population density.^{iv} While it is important to engage in continuous improvement, it appears that fire protection is provided in a broadly equitable manner.

Libraries

NYC's libraries are operated by three separate systems – New York Public Library (Manhattan, the Bronx, and Staten Island), the Brooklyn Public Library, and the Queens Public Library – one of the few remaining legacies of municipal organization prior to the consolidation of New York City in 1898. While the libraries are operated by these not-for-profit organizations, the majority of the operating and capital funds for all three systems are provided by the city of New York. Most of the branches (though not all) sit on land that is owned by the City. These branches are distributed in neighborhoods across the city.

Figure 4: NYC Library Size by Book Circulation, 2014



However, when circulation data is analyzed, some inequity is revealed: circulation in the Bronx is far lower than in the other boroughs.

Without more information, it is impossible to draw conclusions from this data. Circulation may not be the best metric for analysis, in an increasingly digital world – if this were offset by digital downloads, access to technology, or participation in programs, a different conclusion might be drawn. But it is an important starting point for analysis, and should be used to plan for attention to equity.

^{iv} NYC Independent Budget Office, Analysis of Fire Department Response Data, 2013, 2016 (available at <http://www.ibo.nyc.ny.us/iboreports/analysis-of-fire-department-response-data-2013-february-2016.pdf>).

Figure 5: NYC Library Size by Circulation Per Person, 2014

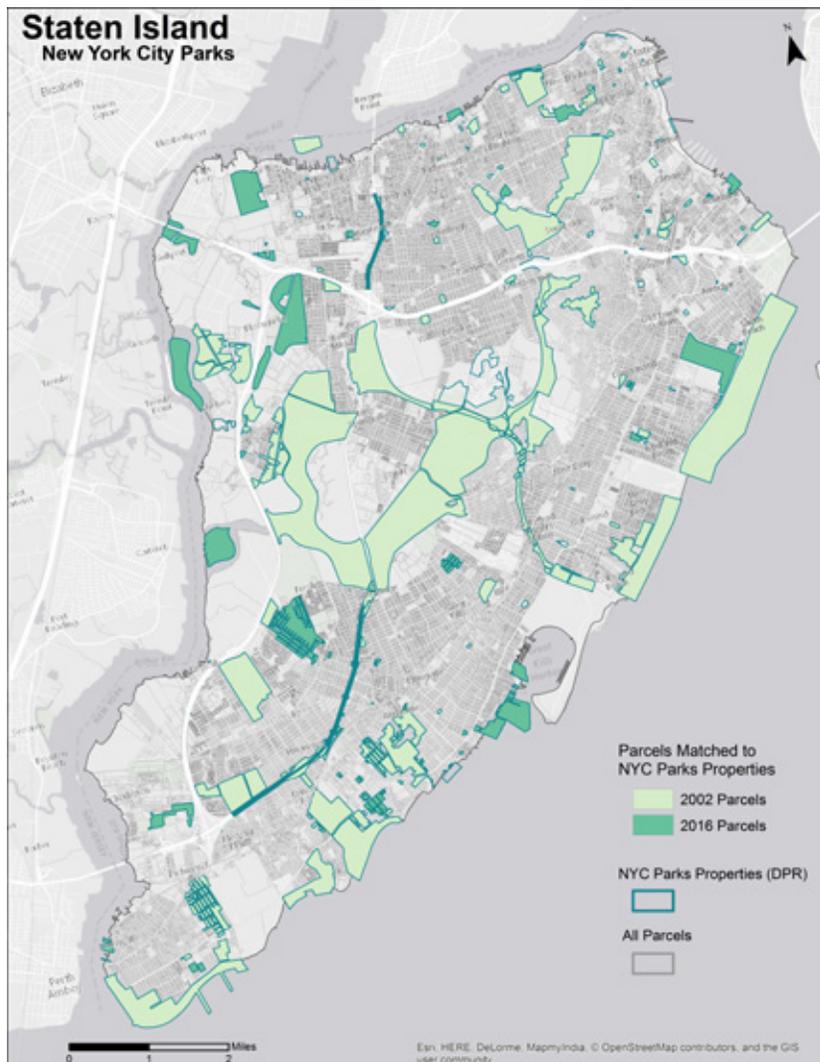
	Circulation	2014 Population	Books Per Person
Brooklyn	14,670,574	2,621,793	5.60
Queens	12,648,195	2,321,580	5.45
Manhattan	11,904,087	1,636,268	7.28
Bronx	4,171,407	1,438,159	2.90
Staten Island	2,085,438	473,279	4.41

Parks

In the case of parks, New York City has made a conscious effort under the last two mayoral administrations to combat historic unfairness in siting. In 2007, more than two million New Yorkers lived more than ten minutes from a park.

Both the Bloomberg and de Blasio Administrations have worked to address this inequitable distribution of City facilities. As part of PlaNYC, Mayor Bloomberg converted dozens of schoolyards into playgrounds, creating new open spaces in many neighborhoods. Through the Community Parks Initiative, Mayor de Blasio is investing \$285 million in under-resourced parks in low-income communities. The City Council’s Parks Equity Initiative also seeks to remedy the inequitable distribution of resources allocated across these parks, distributing \$2.5 million annually across all 51 Council Districts for the support of community program efforts in small neighborhood parks. These investments provide examples of how the City can seek to remedy its historical negligence of equitable distribution in the past, but do not yet address the Fair Share process for siting parks in the future.

Figure 6. New York City Parks in Staten Island, 2002 and 2016



Waste Transfer Stations

One of the most egregious examples of inequitable distribution of City facilities is the City’s historical siting of waste transfer stations (WTS), where intra-city waste haulers deposit their cargos for transfer to landfills and recycling facilities. **Seventy-six percent (76%) of the total citywide permitted capacity for waste disposal is allocated to stations in just four community districts – Brooklyn 1 (Williamsburg and Greenpoint), Bronx 1 (Mott Haven), Bronx 2 (Hunts Point), and**

Queens 12 (Jamaica) – that are (or were, at the time of the stations’ sitings) overwhelmingly communities of color. Despite improving emissions standards for both WTS and sanitation trucks, people who live near such a large concentration of WTS are exposed to dirtier air, more truck traffic on residential streets, and more noise, all of which have a negative impact on community health.

For many years, these WTS handled only commercial waste, while residential waste was disposed of at the Fresh Kills landfill on Staten Island. When Fresh Kills was closed in 2001, the Department of Sanitation (DSNY) began disposing of over 12,000 tons of residential waste per day at private WTS.⁹ In a striking illustration of how difficult achieving distributional equity can be, the City’s efforts to relieve the residents of Staten Island Community District 3 worsened an already unfair situation for residents of the South Bronx, Northern Brooklyn, and Southeast Queens.

To address this critical environmental justice issue, the City embarked on a broad project to bring both process and distributional fairness to the siting of waste facilities with its Comprehensive Solid Waste Management Plan (SWMP), adopted in September 2006. DSNY’s summary of the SWMP could well be a mission statement for the siting of all LULUs:

“For the first time since responsibility for commercial waste was shifted to the private sector, the City is proposing a coordinated and comprehensive approach to addressing the environmental issues associated with the current system of managing commercial waste. By committing not just to increased regulation and planning but also to the use of City-owned infrastructure, this SWMP will ensure that the impacts of the commercial waste system are more evenly distributed throughout the City and that private waste transfer stations, wherever they may be located, will have a reduced impact on their surrounding communities.”⁹

The SWMP called for the overhaul or new construction of six “Marine Transfer Stations” (MTS) to ship garbage by barge, and to ensure that the burdens were more equally distributed by borough. Construction of the facilities has taken most of the past decade. Two of the stations – the Southwest Brooklyn MTS in Gravesend, and especially the East 91st Street MTS on the Upper East Side – were met with extensive opposition. Both remained in the plan; a new ramp at East 92nd Street was added to the project (at a cost of approximately \$30 million) in response to community concerns. Today, more than a decade after the SWMP was adopted, the North Shore MTS in College Point, Queens and the

Hamilton Avenue MTS near Brooklyn’s Gowanus Canal are complete. Construction is underway and expected to be completed in the next year on the 59th Street MTS in Manhattan, East 91st Street, and Southwest Brooklyn. The Gansevoort MTS requires extensive negotiations and planning with New York State, and will not commence construction for several years.

Five of the six MTS’s are in completion. Fair Share reforms will ensure that current and future waste transfer stations – whether they are public or private -- are distributed fairly across the city.

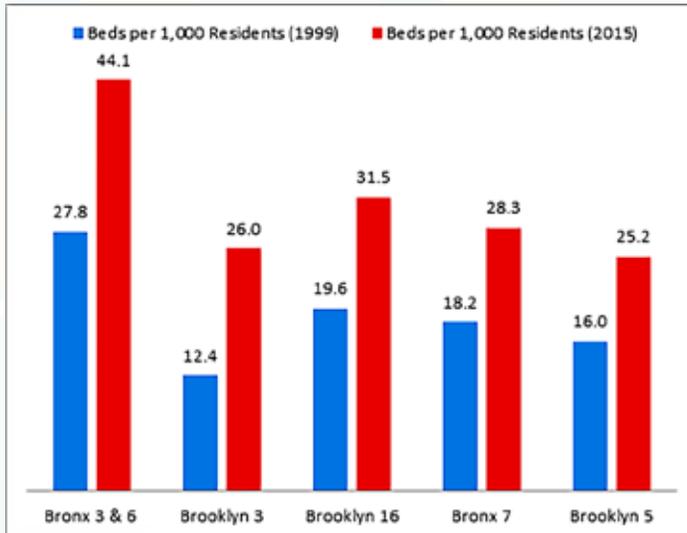
Residential Beds

Residential beds is a broad category which includes correctional facilities, nursing homes, group foster homes, inpatient mental health treatment centers and inpatient chemical dependency treatment centers, homeless shelters, and transitional housing. As noted above, the Fair Share Criteria adopted by the City Planning Commission nominally require agencies to apply stricter scrutiny to sitings in community districts with a high ratio of “residential beds” to population and to explain whether alternative sites were considered. To guide this process, City Planning is required to publish an annual index of the “beds-to-population” ratio for each community district. Unfortunately, this index has not been produced since 2003.

These residential bed facilities are highly concentrated in communities of color. Setting aside Queens Community District 1 (which is first on the list because it includes Rikers Island), the top 10 communities are all communities of color: Queens 14, Manhattan 11, Bronx 3/6, Bronx 11, Bronx 8, Bronx 1/2, Bronx 4, and Brooklyn 16.

Moreover, from 1999 to 2015, the five community districts that have seen the largest increase in residential beds-to-population ratios are all located in central Bronx and central and eastern Brooklyn – all communities of color. These community districts hosted 32% of all beds in 1999 and 33% of beds in 2015.^v At the same time, the three communities that decreased in density with respect to residential beds were all majority or near-majority white. Homeless shelters and transitional housing are heavily concentrated. The top ten community districts have an average of 21.7 shelter beds per 1,000 residents – five times the ratio of the rest of the city. These beds are concentrated in Bronx Community Districts 1, 2, 3, 4, and 6 (central and south Bronx), Manhattan Community Districts 4, 5, 7, and 11 (Chelsea, Midtown, the Upper West Side, and East Harlem, respectively), and Brooklyn Community District 16 (Brownsville).

Figure 7. Five Community Districts with Largest Increase in Residential Beds to Population Ratio



The over-concentration of shelters in low-income communities is sometimes defended on the grounds that homeless households have a preference for shelters located in their neighborhoods, and especially to enable homeless kids to continue to attend their neighborhood school. While the goal of placing children near their schools is laudable, the current shelter siting process fails to meet that goal. A recent study from the NYC Independent Budget Office shows that even as shelters have continued to be concentrated in low-income communities, the percentage of homeless families placed in a shelter near their youngest child’s school dropped dramatically, from 83.3% in 2011 to 52.9% in 2015.

Since 2010, many homeless shelters in New York City have been sited pursuant to “emergency declarations” which allow the initial siting to take place without a Fair Share Statement. While one is supposed to be included when the permanent contract is registered, this is generally long after the shelter has already been opened.

HOW AND WHY NYC’S FAIR SHARE SYSTEM IS FAILING TO MEET ITS GOALS

The City Council’s 2011 hearing, the feedback from community boards and environmental justice organizations, and the substantive analysis above all point in the same direction:

Fair Share Statements Are Inaccessible

Fair Share Statements are not, as a matter of routine, shared with the public. Community boards receive them on an inconsistent basis at best. In the Council’s 2011 survey of community boards conducted by Council Member Lander’s staff, only four of 16 boards that responded reported that they always received Fair Share Statements in connection with ULURP and Section 195 sitings, while only 3 boards reported always receiving the statements in connection with contracted sitings and 9 boards

v Taking Manhattan 4 and 5, Bronx 1 and 2, and Bronx 3 and 6 as one community each for purposes of obtaining accurate and recent demographic information.

Residential Beds in East Harlem

Manhattan Community District 11, with 52 beds per 1,000 residents, or 4% of all residential facility beds in the city, embodies the legacy of decades of poor planning by and coordination between City and State governments and the failures of Fair Share. A low-income community of color, it is third in the city’s beds-to-population ration. However, Queens 1 (69.2 beds/1,000 residents) is explained primarily by its inclusion of the Rikers Island jail complex, and Queens 14 (52.4 beds/1,000 residents) is explained primarily by a disproportionate concentration of nursing homes and assisted living facilities.

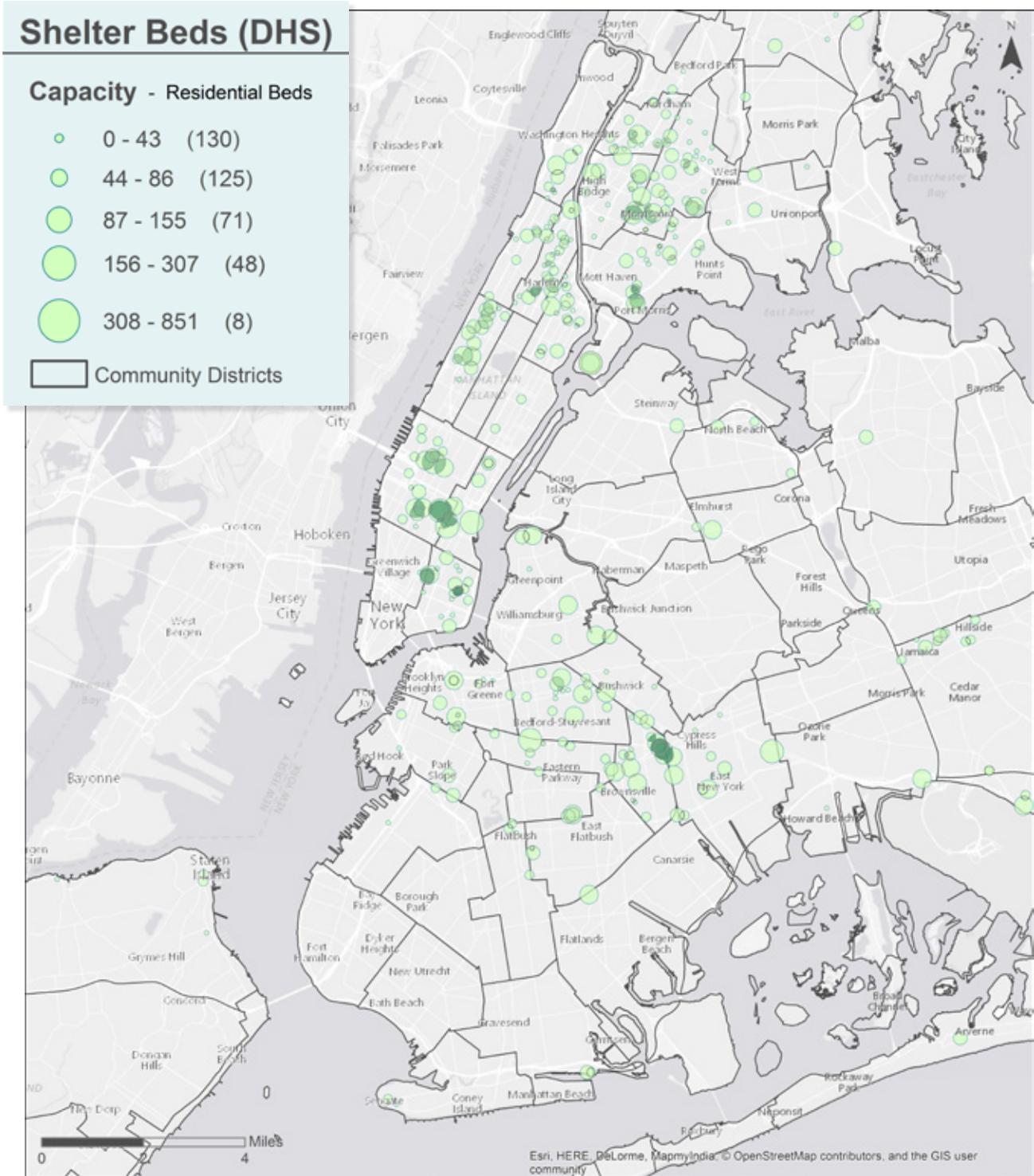
Manhattan CD11, composed primarily of East Harlem and Wards/Randall’s Island, is home to 1,082 chemical dependency treatment beds, 1,312 mental health treatment beds, and 2,691 shelter and transitional housing beds. The community hosts 5% of all Department of Homeless Services (DHS) shelter beds, 19% of all State Office of Alcoholism and Substance Abuse Services (OASAS)-licensed beds, and 11% of all State Office of Mental Health (OMH)-licensed beds in the city.^{vi}

Distributional equity does not only mean equity between community districts, though that is a reasonable unit of analysis, but also equity within community districts – as the Fair Share Criteria recognize in their directive to specifically consider facilities within one half-mile of a proposed facility as well as the total number of facilities within the community district. Yet Manhattan 11 fails this test of equity too, with one-third of the DHS, OASAS, and OMH beds in the district located between 116th St. and 126th St. between the East River and Park Avenue.

vi If facilities were perfectly evenly distributed between the City’s 59 community districts, each district would host 1.7% of each facility type.

Moreover, from 1999 to 2015, the five community districts that have seen the largest increase in residential beds-to-population ratios are all located in central Bronx and central and eastern Brooklyn – all communities of color.

Figure 8. DHS Shelter Bed Concentration by Community District, 2015

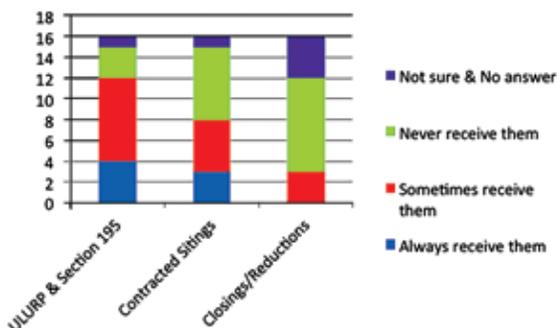


New York City's Fair Share system is failing to meet its Charter-established goals. It does not provide either process transparency or distributional equity.

reported that they never received statements in connection with facility reductions and closings. City Council staff also found that Fair Share Statements are not accessible to the general public, are typically not made available to community boards and borough presidents until the ULURP clock has begun to tick, and are generally not accessible absent a FOIL request for contracted sitings. The Subcommittee further found that statements were often not produced until after community outcry over a siting, i.e. after the siting decision has effectively been made, or were not produced at all.

A cursory review of recent Fair Share Statements received by the Council shows that this practice continues today. For instance, a Fair Share analysis submitted to the Council on July 14, 2016 pursuant to the renewal of a contract for a cluster-site shelter in the Bronx acknowledged that the shelter had been in operation since October 2014 and that "DHS did not provide copies of this Analysis to the Borough President or Community Board prior to its occupancy of the Building."¹⁰ There is no reason to believe that such an analysis was ever performed until the contract came up for renewal, two years after the initial contract was registered.

Figure 9: Community Board Responses to 2011 Survey



Sitings that go through ULURP have a transparent process featuring public hearings and multiple veto points. Similarly, Section 195 office sitings require community board notification and allow for a Council override vote. Article 9 contracted sitings, however, only require notification of the community board and borough president – a requirement that the 2011 hearing found is routinely ignored.

If a member of the public wishes to review a Fair Share Statement before attending a contract hearing, they must either request it from their local community board or, if the board never received it, file a FOIL request with the relevant agency. In this case, the statement would almost certainly not be made public in a timely enough fashion to impact any member of the public's testimony. This is assuming that the Fair Share Statement exists prior to the FOIL request rather than being produced in response to it, which

Meeting NYC's "Right To Shelter" By Doing Our Fair Share

New York City is unique in having a "right to shelter" – a legal mandate to provide shelter for anyone who is homeless – established by the Callahan v. Carey litigation in 1979. While this right was established by litigation pursuant to Article 17 of the New York State Constitution, New Yorkers can be proud that our city rises to its obligation to care for people in need.

With homelessness at historic levels (over 60,000 individuals are currently in the shelter system), this legal and moral obligation presents a continuing challenge to New York City. Over the past several years, NYC Department of Homeless Services has been opening additional shelters for individuals and families.

Several of the shelters have met with vociferous opposition, especially in Maspeth, Coney Island, and Sunset Park. While opponents have sometimes claimed that their opposition was a matter of fairness, the map above shows that shelters are **not over-concentrated** – or even fairly represented – in these neighborhoods.

Homeless shelters enable the City to meet its obligations, and they should be sited fairly, with an effort at distributional equity throughout the city. We would not allow local opposition (or increased cost) to prevent communities from getting their Fair Share of fire-houses or schools. We should not allow these to be reasons for failing to fairly site shelters.

At the same time, the City should provide clear, transparent information to communities, and listen to their concerns, before opening a new shelter. Using the emergency siting process to avoid completing a Fair Share Statement and reduce the provision of notice may seem like a faster way to site shelters especially to address an urgent need. In the long run, however, we believe it reduces confidence in the City's processes and may in fact exacerbate NIMBY sentiments.

In some cases, communities that did not already have their Fair Share were open to the siting of shelters. In Kensington, Brooklyn, neighbors warmly welcomed a shelter to a community board (Brooklyn Community Board 12) that did not yet have a shelter – for which they were recognized with a "Compassionate Communities Award" from the Coalition for the Homeless. In Jackson Heights, despite some initial opposition, the community also accepted a shelter.

We encourage the City to continue to strengthen its outreach and education, in an ongoing effort to remove the stigma from those of our fellow New Yorkers who have needed to enter the shelter system, especially at a time of skyrocketing rents. In addition, the City should continue to do more to ensure that shelters are operated by high-quality not-for-profit organizations, since well-run shelters make good neighbors. Lastly, it is vital to note that that permanent supportive housing (such as that developed under the HPD Supportive Housing Loan Program) is not covered by the existing Fair Share rules. There is no intention to change that.

The City's right to shelter should be met by all communities doing their Fair Share.

Council staff found in 2011 is not an assumption that can safely be made.

Inadequate Disclosure of Data Makes Fair Share Claims Difficult to Evaluate

The Department of City Planning does not release enough data for the public or community boards to evaluate the fairness of a proposed siting or make objective comparisons between communities. It has failed to release a ranking of community beds-to-population ratios, an annual requirement under the Fair Share Criteria, since 2003. While DCP produces the Selected Facilities and Program Sites database every two years to satisfy the gazetteer requirement of Section 204, accompanied by the Zoning and Land Use Application (ZoLa) to satisfy the atlas requirement, these are not adequate tools for public analysis. One must have some experience working with data and Microsoft Access to apply the data in the Selected Facilities database, while ZoLa is functionally useless for attempting to analyze the distribution of City facilities because it does not include contracted facilities or capacity information, meaning that it completely excludes homeless shelters and almost all other types of social service facilities.

Critically, the Selected Facilities database often does not include information on the capacity of facilities – e.g. tons of solid waste that can be processed, number of day-care slots – arguably the most important variable in determining a facility's impact on the surrounding neighborhood. Moreover, even for the facility types like jails and nursing homes that it does include capacity information for, it cannot be used to produce a ranking of beds-to-population, or other relevant ranking ratios, unless it is combined with another data source that has population counts for each community district. The database is also incomplete, missing entire classes of facilities like Human Resources Administration (HRA) program offices and seeming to overlook other facilities like the North Infirmary Command on Rikers Island, despite providing information for all other facilities on the island.

As a result of this lack of clear and accessible data, it is very difficult to meaningfully evaluate Fair Share claims. It is difficult to demonstrate clearly to a community that they do not, in fact, have more than their Fair Share, or to disprove claims that are not supported by the facts. For the same reason, this lack of data makes it difficult to empower districts that are, in fact, over-concentrated to advocate on their own behalf without expert assistance.

A genuine conversation with communities requires clear, accessible data that identifies whether facilities are over-concentrated in an area, and which can be easily overlaid with newly proposed facilities. This data would not serve one community or City agency over another – but would rather inform communities and agencies alike, to foster meaningful dialogue and produce

objectively fairer decisions in the siting process.

Insufficient Opportunity for Community Input

As noted above, sitings that go through ULURP have multiple public hearings and opportunities for members of the public to provide feedback. Section 195 sitings have fewer opportunities for public input, but are still relatively transparent and tend to not be controversial since they are primarily office space or data facilities – though office space that involves service provision, such as HRA job centers or Department of Small Business Services Workforce1 centers should arguably be subject to more public scrutiny and input than office space for purely administrative positions.^{vii}

Article 9 contract sitings, however – which include homeless shelters, day care programs, waste transfer stations, and other programs sited via contract – have far less opportunity for community input. Unless a member of the public is a keen reader of the City Record, they are unlikely to know that a contract is being registered or when and where they may give their opinion on it. Furthermore, when contracts are registered under emergency circumstances, there is no opportunity for the public to provide input whatsoever; a Fair Share Statement is not even produced until the agency involved seeks to make the contract permanent, by which point the facility may have been up and running for over a year.

Statement of Needs is Not a Useful Planning Document

The Citywide Statement of Needs (SON), required by Charter Section 204 and intended by the Charter Commission to be the cornerstone of a more thoughtful and transparent planning process rooted in long-term thinking, is not currently a useful document. Only a small fraction of relevant City projects are included in it – a 2013 report by the Comptroller's office found that the SON for 2010 and 2011 listed only one homeless shelter despite approximately 20 new shelters opening in those years.¹¹ The SON for Fiscal Years 2016 and 2017 listed 23 planned facilities, but only specified which community district the City intended to locate the facilities for 10 of those facilities and declined to specify which borough it intended to site the facilities in five cases.¹² The SON for Fiscal Years 2017 and 2018 is even less detailed, with no community district identified for 18 of 34 planned facilities, and again five facilities for which the City did not specify in which borough it intends to site the facility.¹³

While pre-determination of siting locations without public input would contradict the goals of Fair Share, it is difficult to imagine that City agencies are as agnostic about the location of new facilities as the SON would seem to imply.

The information presented for each planned facility tends to be the bare minimum – the agency involved,

vii These kinds of facilities, unlike many discussed in this report, could attract competition between communities, as geographical proximity to social services is often a priority for families and individuals seeking or receiving government support.

the approximate square footage of the proposed facility, a very brief description of the facility's purpose, and "siting criteria" that in most cases are not more detailed than expressing a desire for proximity to public transit and a minimum number of parking spaces. Even this minimum description is more than many facilities receive. Many contracted facilities, including nearly all homeless shelters and private waste facilities, are excluded from the SON.

If the SON is not particularly useful as a planning document, its review in the annual Mayor's Management Report (MMR) is even less so. Section 204 requires the MMR to provide a list of proposed action in the SON that:

- Have been implemented
- Have not been implemented
- Have been implemented in a manner significantly different from what was proposed, with a reason provided for the change

The MMR meets this requirement by listing projects, their proposed location (preserving the frequent ambiguity of the SON), and whether they are implemented, in progress, active, modified, or canceled.¹⁴ The MMR's vague and perfunctory list lacks explanations for projects that have been modified or canceled, and does not satisfy the requirements of NYC Charter Section 204.

Overreliance on Emergency Contracting

Charter Section 315 exempts emergency contracts from the Fair Share process, provided that the Comptroller and Corporation Counsel approve the procurement ahead of time and that there is an "unforeseen danger to life, safety, property or a necessary service." Skipping public review and thorough analysis of contracted facilities is clearly justified during and immediately after an event like a hurricane or a terrorist attack.

Since 2010, however, the City's Department of Homeless Services has relied upon a much looser definition of "emergency" for siting homeless shelters. According to a 2013 analysis by then-Comptroller John Liu, DHS began using the emergency procurement process to site homeless shelters in 2010, and also occasionally paid shelter providers on a per diem basis without signing a contract.¹⁵ The City's homelessness crisis is undoubtedly a moral and public policy emergency – but not one that justifies sitings without attention to issues of equity. The City has, and uses, the ability to issue open-ended requests for proposals for contracts that need to be solicited, reviewed, and approved on a faster timetable than the standard contracting process allows for. The City's homelessness problem is not unforeseen, and the use of emergency contracts to address it needlessly exacerbates community opposition to shelter sitings, by evading opportunities for public input altogether.

Emergency-contracted facilities must eventually go through the standard Article 9 siting procedure if they are to become permanent, but the delay between the siting of an emergency-contracted facility and the issuance of a Fair Share analysis of the siting can vary greatly, and the presence of the emergency-contracted facility without incident to the community can be used as a tautological justification for making the siting permanent.

As the number of homeless New Yorkers in the shelter system has grown, the City has become increasingly reliant on renting room in hotels, for which there is even less notice or provision for Fair Share analysis. Where these shelters are secured by contract to serve as a longer-term, standalone facility, they eventually undergo a Fair Share analysis – although this is almost always after the contract has been signed under the emergency declaration. In many cases, however, DHS simply rents the rooms in a hotel. Even if DHS rents all of the rooms, so long as they do not enter into a formal contract, no community notification or Fair Share process is required.

The City would benefit from comprehensive plan for the equitable siting of shelters. As noted previously, this planning and siting process would increase awareness, educate residents and de-stigmatize the populations the shelters seek to serve. Even with such a planning process, emergency sitings may be required to meet the City's legal obligation to provide shelter, given the current state of our homelessness and housing crisis. However, a commitment to fairness in siting means that emergency sitings should be subject to a higher threshold for review in the few districts that already host far more than their Fair Share – which means siting shelters in neighborhoods that are not yet doing theirs.

Analytic Framework for Fair Share is Outdated

The Fair Share Criteria were developed more than 25 years ago to address the needs of a very different city. New challenges of distributional fairness and environmental resilience have arisen that need to be taken into consideration. How does fairness factor into planning for rising seas and more extreme weather? How does the City decide where to launch community solar programs? What does our waste infrastructure look like as we seek to move NYC toward "zero waste"? These are siting and land use questions that invoke issues of fairness as much as any shelter or power plant, yet it is unclear to what, if any, extent the Fair Share Criteria as currently written can help the City answer them because the Criteria are revisited so infrequently.

Revising the Fair Share Criteria on a regular basis would allow the City to consider new kinds of facilities that should be subject to or omitted from Fair Share process altogether, given technological advances, new policy challenges.

Fairness Considerations for Affordable Housing

Unlike homeless shelters and transitional housing, affordable housing is not covered by New York City's Fair Share framework. Affordable housing is not generally authorized as an ongoing contract or a City service, but instead as a private development (usually by a for-profit or not-for-profit developer), created pursuant to zoning, with a variety of direct subsidy or tax exemptions. As a result, Fair Share is not the appropriate framework for analyzing affordable housing distribution.

Nevertheless, New York City should have a framework for analyzing, planning, and engaging with communities about affordable housing distribution. Such an analysis should include equity of distribution, the needs of specific communities, the distribution and cost of private sector housing, and, importantly, fair housing concerns such as availability of existing housing opportunities, racially concentrated areas of poverty, and existing patterns of racial and economic segregation.

In the past, the only public document that attempted to conduct this analysis was the statement for Affirmatively Furthering Fair Housing (AFFH), conducted as a condition of the New York City's receipt of federal funding from the Department of Housing and Urban Development (HUD). This statement provided a cursory investigation of impediments to fair housing, but it did not conduct a meaningful analysis of segregation, existing distribution of housing opportunities, and other issues relevant to a complete analysis of housing.

In 2015, HUD promulgated new rules for AFFH under the Federal Fair Housing Act. These rules are designed to ensure that localities are "taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws." The rules provide a framework for conducting the type of analysis that has been missing in previous housing policies put forth by the city of New York. HUD has also provided data to assist localities in analyzing existing patterns of segregation. While Fair Housing is not the only appropriate frame of analysis for affordable housing, the HUD-mandated rules leave room for analyzing other policy issues that affect the siting of affordable housing.

It is unclear whether the incoming Trump administration will be supportive of the new AFFH rules. HUD Secretary Nominee Ben Carson has questioned the role of the Federal government in combating segregation, particularly as it relates to the AFFH.

Regardless of what happens at the Federal level, New York City should aim to ensure fair inclusion of affordable housing units – at diverse incomes, for the full range of family sizes, for seniors, for people with disabilities – in neighborhoods across the city and implement the AFFH process even if the HUD revises its approach under the next administration. Given the volume and complexity of affordable housing, and the way it differs from the provision of other City-subsidized services, this should not be done through the Fair Share system for siting City facilities but instead through a proactive "Fair Housing Plan." This plan should be developed by the NYC Department of Housing Preservation and Development in consultation with other City agencies. It should include an active process of community engagement, with annual reporting requirements, and periodic updates (e.g. every five years).

Lack of Thoughtful Planning for "Least-Fair" Sitings

There may be occasions when the City, acting in good faith, has no alternative but to site facilities in communities that are already saturated with such facilities, for instance when a facility must be sited in one of the city's dwindling manufacturing zones. There are also communities that have historically borne much more than their Fair Share of certain facility types, but that the City cannot easily de-concentrate even if it commits to siting no further such facilities in those communities (e.g. on Rikers Island).

Yet aside from providing for the creation of a facility monitoring committee upon the request of the local community board or borough president (which almost always occurs after a facility is already operational rather than during the siting process), the Fair Share Criteria do not directly address how the City will address the infrastructure or service impacts that a facility might bring to a specific community district, for the benefit of the city as a whole. Indeed, when the City lost a highly contested lawsuit over an agency's failure to comply with the Fair Share Criteria in choosing to site new facilities in a community that already "accommodat[ed] a grossly disproportionate share of City facilities," the remedy imposed by the court was simply to redo the Fair Share analysis.¹⁶

Communities tend to object to certain facility types due to a perception that those facilities will threaten a neighborhood's health, safety, or prosperity. But a thoughtful planning process that emphasizes fitting facilities seamlessly into neighborhoods can help reduce community opposition, ensure City facilities are not unfairly burdening one particular community with negative impacts, and can even add value to the value of the community on balance.¹⁷

For example, in 2015 after years of planning with the local community, the Department of Sanitation (DSNY) opened a new garage and salt shed on Spring Street in lower Manhattan. The initial proposal was vociferously opposed by community members, but the completed building, which features a green roof and a design that is more likely to bring to mind an art museum than a government facility, won acclaim from former opponents and even architecture critics for its beautiful design.¹⁸ However, New Yorkers should not have to live in wealthy neighborhoods like TriBeCa to have the City put thought, effort, and financial resources into its planning process. The City should therefore adopt a more formal process by which the community's needs are taken in direct consideration if a "least-fair" siting is unavoidable.

Fair Share Does Not Apply to State and Federal Facilities

Even if Fair Share were implemented exactly as the Charter Commission intended, the lack of an equivalent process at the state and federal level could still produce unfortunate over-concentrations of state facilities. For instance, if the City were to actively reduce the number of shelter beds in East Harlem, the neighborhood would still have almost one-fifth of all inpatient substance abuse treatment centers in the City because those are overseen by the State government.

REFORMING FAIR SHARE

To address the issues identified in this report – to achieve both a more transparent process and more equitable distribution of City facilities – the City Council has developed recommendations to reform New York City’s Fair Share system. A more transparent, forward-looking, and rigorous planning process will lead to both greater distributional equity and will prevent putatively unfair sitings. Adopting these recommendations would enable the Fair Share system to work as the City Charter envisioned, to increase transparency in the siting process, update the Fair Share Criteria, better address facilities currently excluded from the Fair Share framework, reform the citywide Statement of Needs, and raise the bar for unfair sitings to strengthen the Fair Share framework.

Increase Transparency in the Siting Process

- **Create an online posting requirement for all Fair Share Statements.** Keeping Fair Share Statements tucked away in inaccessible agency filing cabinets, available only by FOIL or lawsuit, is entirely incompatible with the spirit of City Charter sections 203 and 204. Wherever Fair Share Statements are required, City agencies should be required to post them publicly on the relevant agency’s website as well as the Department of City Planning’s website. Additionally, all City facilities – including office lease acquisitions – should be required to produce a statement of compliance. This posting requirement will allow for a historical perspective as elected officials, community boards, and members of the public could see how agencies view siting different kinds and quantities of facilities in the same community over time.
- **Develop and publish community district rankings of facility concentrations, online and in the citywide Statement of Needs.** At present, it is nearly impossible for the public, elected officials, and journalists to objectively compare facility concentrations in different communities without the CPC-mandated ranking of districts. The Mayor should be required to establish and include in the annual citywide Statement of Needs (SON) two indications of how saturated an affected community district is with City facilities. First, for every category of facility described in the Fair Share Criteria, the SON should rank each community district by how concentrated it is with such facilities, in terms of the ratio of facility capacity to the community district’s population. Second, for every facility listed in the SON, the SON should provide a similar ranked index of community districts, highlighting the most and least-fair sitings by facility code used by the Department of Citywide Administrative Services. These community rankings would serve to debunk false Fair Share claims and empower over-concentrated communities to advocate on their own behalf.
- **Create an online, interactive map to accompany the citywide Statement of Needs.** The Department of City Planning should be required to provide to the public a free, interactive online mapping tool with explanatory text and visual overlays indicating

the specific locations, addresses and current or planned use of City-owned property and City facilities, in addition to a brief guide describing each of the facility types and uses included on that map. This map should also be required to include facility concentration data for each community district. In addition to the map prepared by DCP, the data should be open and available to the public for download and processing to ensure communities have access to the raw data that they need.

- **Update the atlas and gazetteer on an annual basis.** The citywide Statement of Needs is an annual statement of what city facilities the City expects to open, close, significantly expand or significantly shrink in the next two fiscal years. The Mayor should be required to update the map and explanatory text (often called the Atlas and Gazetteer) that accompany the citywide Statement of Needs every year to correct existing confusion about how often updates are required.

Update the Fair Share Criteria and Address Excluded Facilities

- **Overhaul full substance of the Fair Share Criteria.** The substance of the Fair Share Criteria has not been written since the early 1990s and is outdated for the 21st Century. The Fair Share Criteria should be overhauled and should prohibit facility siting decisions based solely on costs, which may help lower-income communities from becoming overburdened with unfavorable facilities simply due to lower real estate costs in those areas.
- **Call upon New York State to adopt a system similar to Fair Share.** New York State should create a uniform process for community notification and local input on the siting of any state or state-authorized facility in the city of New York and should review the distribution of such facilities already in place.
- **Update the Fair Share Criteria every five years.** Change, and rapid change at that, has always been New York City’s one constant. Yet the Fair Share Criteria have not been updated in over 25 years. The City Planning Commission should review and study the Criteria and process for citing City facilities every five years to recommend possible revisions and improvements.

Reform the Citywide Statement of Needs

- **Improve community access to information about the siting of City facilities.** Currently, planned facilities are only required to be listed in the citywide Statement of Needs by community district if it is “practicable” to do so, and if the facility is under “serious consideration.” As a result, the citywide Statement of Needs often lists facilities without any indication of where the agency plans to site it. “Serious consideration” should therefore be defined to mean 1) when an agency is conducting feasibility or other studies for a location or 2) when an agency has begun negotiations for a site, thereby requiring agencies to include additional geographic detail about the proposed site whenever it is known. City agencies should also be required to conduct additional community outreach for facilities that are not listed in the citywide Statement of Needs, above and beyond any comment period afforded by the ULURP process. This requirement would function as a strong incentive for agencies to include planned sitings in the SON, where fairness can be analyzed more comprehensively, and communities can engage at an earlier and appropriate time without stalling the siting of these necessary City facilities.
- **Require more capital projects to be included in the citywide Statement of Needs.** Today, the Statement of Needs consists of an incomplete list of City facilities subject to the Fair Share Criteria, but does not include other capital projects. The citywide Statement of Needs should include additional information on capital investments such as property acquisitions, investments in streets, bridges or tunnels, making it easier to assess the district’s current needs or capacity with respect to infrastructure. Requiring this additional detail would improve the usefulness of the Statement of Needs for long-term planning in New York City.

Raise the Bar for Unfair Sitings in Over-Concentrated Districts and Strengthen the Fair Share Framework

- **Prohibit unfair sitings in highly over-concentrated districts.** City agencies should be prohibited from siting facilities in highly over-concentrated districts unless the agency can pass a far higher bar than the standard Fair Share analysis currently requires. The City Planning Commission should publicly review and vote on facility sitings in districts that are the most over-concentrated with that facility type. An agency should only be able to overcome this prohibition by demonstrating that the facility in question serves a particular need of that community district’s residents or workers. This prohibition would apply to contracted facilities (as well as City facilities sited through ULURP or lease acquisition), and would therefore limit the use of emergency sitings in over-concentrated districts to situations where the facility serves a need specific to that district.

- **Mandate the Fair Share Criteria as binding rules, not guidelines.** Currently, courts view the Criteria as mere guidelines and are therefore deferential to agency discretion, even with unfair sitings. By recasting the criteria as rules, Fair Share plaintiffs would have more support in litigation over objectively unfair sitings. The City Council should also be authorized to initiate future reviews of the rules, thereby enabling the consideration of timely rule changes that are consistent with an ever-changing city. Finally, these rules should be subject to rulemaking under the City’s Administrative Procedure Act, which would provide for additional public notice, commentary and recommendations that may help improve and strengthen the rules over time.

CONCLUSION

The 1989 Charter Revision dramatically reimagined New York City government, with a particular focus on equity, transparency, and increased community engagement. The powers of the inequitable Board of Estimate (which had been found unconstitutional by the Supreme Court) were redistributed, primarily to the more representative City Council. The Council was expanded from 35 to 51 Members, with new provisions for campaign finance to allow broader representation. The Fair Share provisions of the 1989 Charter were intended to further similar goals – to advance transparency, equity, and community engagement.

Nearly three decades later, NYC's Fair Share system is demonstrably failing to meet those goals. The limitations of NYC's current Fair Share framework are clear: a lack of compliance with existing rules, little disclosure of data, few opportunities for community input, little proactive planning, and no incentives to avoid overconcentration have resulted in a system that has failed to advance fairness in siting City facilities.

No system will achieve perfect fairness. Siting decisions will remain complex, and sometimes highly political or emotionally-charged. Agencies will seek the least-burdensome ways to site necessary facilities. City budget staff will look for the least expensive options. Communities will sometimes vociferously claim that sitings are unfair, even if the data shows otherwise. Addressing already-existing inequities – especially the overconcentration of some facilities in low-income communities of color – will take years.

Nonetheless, the package of reforms being introduced in the Council – significantly increasing transparency in the siting process, updating the Fair Share criteria, reforming the Citywide Statement of Needs, and prohibiting the most unfair sitings – will go a long way to restore the vision that spurred Fair Share's inclusion in the Charter. More important, it will help New York to be a fairer city for all of its communities.

Appendix 1

Charter Sections 203 & 204

§ 203. Criteria for location of city facilities.

a. Not later than the first day of July, nineteen hundred ninety, the mayor, after consulting with each of the borough presidents, shall file with the city planning commission proposed rules establishing criteria for (1) the location of new city facilities and (2) the significant expansion, closing or significant reduction in size or capacity for service delivery of existing facilities. The criteria shall be designed to further the fair distribution among communities of the burdens and benefits associated with city facilities, consistent with community needs for services and efficient and cost effective delivery of services and with due regard for the social and economic impacts of such facilities upon the areas surrounding the sites. Not later than thirty days after the filing of such proposed rules, the city planning commission shall publish a notice of proposed rulemaking under section one thousand forty-three with regard to such rules, as proposed by the mayor or as proposed to be modified by the commission. Promptly thereafter, the commission shall approve or approve with modifications the rules and shall file the rules as approved with the council.

b. At any time after the adoption of such criteria, the mayor, after consulting with the borough presidents, may submit to the city planning commission proposed amendments to the rules. Not later than thirty days after the filing of such proposed amendments, the city planning commission shall publish a notice of proposed rulemaking under section one thousand forty-three with regard to such amendments, as proposed by the mayor or as proposed to be modified by the commission. Promptly thereafter, the commission shall approve, approve with modifications or determine not to approve the amendments and shall file any approved amended rules with the council.

c. For purposes of this chapter, "city facility" shall mean a facility used or occupied or to be used or occupied to meet city needs that is located on real property owned or leased by the city or is operated by the city or pursuant to a written agreement on behalf of the city.

§ 204. Citywide statement of needs.

a. Each year not later than the fifteenth day of November, the mayor shall submit to the council, borough presidents, borough boards and community boards a citywide statement of needs concerning city facilities prepared in accordance with the criteria established pursuant to section two hundred three. Copies of the statement shall also be made available to the public in the main branch of the public library in each borough. The statement shall identify by agency and program: (1) all new city facilities and all significant expansions of city facilities for which the mayor or an agency intends to make or propose an expenditure or to select or propose a site during the ensuing two fiscal years and (2) all city facilities which the city plans to close or to reduce significantly in size or in capacity for service delivery during the ensuing two fiscal years.

b. With respect to the city facilities referred to in clause one of subdivision a of this section, the statement of needs shall describe for each proposed new city facility or significant expansion: (1) the public purpose to be served thereby, (2) the size and nature of the facility, (3) the proposed location by borough and, if practicable, by community district or group of community districts, and (4) the specific criteria to be used in locating the new facility or expansion.

c. With respect to the city facilities referred to in clause two of subdivision a of this section, the statement of needs shall describe with respect to each such city facility: (1) the reasons for such proposed closing or reduction, (2) the location, and (3) the specific criteria for selecting the city facility for closure or for reduction in size or capacity for service delivery.

d. The statement of needs shall be accompanied by a map together with explanatory text, indicating (1) the location and current use of all city-owned real property, (2) all final commitments relating to the disposition or future use of city-owned real property, including assignments by the department of citywide administrative services pursuant to clause b of subdivision three of section sixteen hundred two, and (3) to the extent such information is available to the city, (i) the location of health and social service facilities operated by the state of New York or the federal government or pursuant to written agreement on behalf of the state or the federal government; and (ii) the location of transportation or waste management facilities operated by public entities or by private entities pursuant to written agreements with public entities, or by other private entities that provide comparable services. Information which can be presented most effectively in text may be presented in this manner. In addition to being transmitted with the statement of needs pursuant to subdivision a of this section, such map shall be kept on file with the department of city planning and shall be available for public inspection and copying. The map shall be updated on at least an annual basis.

e. Preparation of the statement of needs. (1) Annually on such date as the mayor shall direct, each agency shall submit to the mayor a statement containing all the information required to be included in the statement of needs for the ensuing two fiscal years pursuant to subdivisions a, b and c of this section that relates to the plans, jurisdiction and responsibility of such agency. Such statements shall be known as the departmental statements of need for city facilities. In preparing such departmental statements of needs, each agency shall review and consider the district needs statements submitted by community boards pursuant to paragraph ten of subdivision d of section twenty eight hundred and the statements of budget priorities submitted by the community boards pursuant to section two hundred thirty. (2) The mayor, assisted by the department of city

planning, the department of design and construction and the department of citywide administrative services, shall review such departmental statements of need and use them to prepare the statement of needs. In preparing the statement of needs, the mayor shall apply the criteria established pursuant to section two hundred three.

f. Upon receipt of the statement of needs pursuant to subdivision a of this section, each community board and borough president shall review the statement of needs. Each community board shall make the statement of needs available to the public and conduct a public hearing on the statement of needs. Each community board and borough president shall have the right to submit comments on the statement of needs to the department of city planning within ninety days of receipt of the statement. Each borough president shall have the right, within ninety days of receipt of the statement of needs, to submit a written statement to the mayor proposing locations for any new city facilities to be located in his or her borough pursuant to the statement of needs. All such locations proposed by a borough president shall be located in his or her borough and shall be certified by the borough president as being consistent with the specific criteria for the location of city facilities contained in the statement of needs and with the criteria established pursuant to section two hundred three. Each city agency shall consider such written statements in taking actions with respect to matters included in the statement of needs.

g. Whenever an application involving a new city facility is submitted to the department of city planning pursuant to paragraph five, ten or eleven of subdivision a of section one hundred ninety-seven-c, the applicant shall include as part of the application a statement of (1) how the proposed action satisfies the criteria for the location of city facilities established pursuant to section two hundred three, (2) whether the proposed action is consistent with the most recent statement of needs, and (3) whether the proposed action is consistent with any written statements or comments submitted by borough presidents and community boards in response to the statement of needs. If the proposed action is not consistent with the criteria for location of city facilities, the statement of needs, or any such written statements or comments submitted in response to the statement of needs, the agency shall include as part of its application a statement of the reasons for any such inconsistencies. If the proposed new facility is not referred to in the statement of needs, the applicant shall submit to the affected borough president a description of the public purpose to be served by the city facility, its proposed location, the appropriation (if any) that the agency intends to use in connection with the facility, the size and nature of the facility and the specific criteria for the location of the facility. The affected borough president shall have the right, within thirty days of the submission of such description, to propose an alternative location in his or her borough for the proposed city facility, provided that the borough president shall certify that the alternative location satisfies the criteria for location of city facilities under section two hundred three and the specific criteria for locating the facility in the statement of needs. The application for the proposed site selection, disposition or acquisition shall not be certified and shall not be reviewed

pursuant to section one hundred ninety-seven-c until at least thirty days after the submission of such information to the affected borough president. A borough president may elect to waive the right to such thirty-day review period.

h. The mayor's management report, prepared pursuant to section twelve, shall include a review of the implementation of the statement of needs. Such review shall consist of (1) a list of the proposed actions in the statement of needs that have been implemented and of those proposed actions that have not been implemented and (2) a description of the proposed actions in the statement of needs which have been implemented in a manner significantly different from what was proposed in the statement of needs and the reasons therefor.

Appendix 2

The Fair Share Criteria

APPENDIX A TO TITLE 62 CRITERIA FOR THE LOCATION OF CITY FACILITIES*

Preface	
Article 1.	Authority.
Article 2.	Purpose and Goals.
Article 3.	Definitions.
Article 4.	Criteria for Siting or Expanding Facilities.
Article 5.	Criteria for Siting or Expanding Local/Neighborhood Facilities.
Article 6.	Criteria for Siting or Expanding Regional/Citywide Facilities.
Article 7.	Criteria for Siting or Expanding Administrative Office and Data Processing Facilities.
Article 8.	Criteria for Closing or Reducing Facilities.
Article 9.	Actions Not Subject to ULURP or Section 195.
Attachment A	Listing of Local/Neighborhood Facilities
Attachment B	Listing of Regional/Citywide Facilities, Transportation and Waste Management Facilities and Residential Facilities
Attachment C	Types of Residential Facilities

Preface

These criteria are intended to guide the siting of city facilities, as provided by Section 203 of the City Charter. The fair distribution of city facilities will depend on balancing a number of factors, such as community needs for services, efficient and cost effective delivery of those services, effects on community stability and revitalization, and broad geographic distribution of facilities. Furthermore, these factors can be weighed more effectively, and siting decisions can be accepted more readily, when communities have been meaningfully informed and consulted early in the siting process. The intent of these guidelines is to improve, not to obstruct, the process of siting facilities. Under the

provisions of Section 204 of the Charter, the Mayor will prepare an annual Statement of Needs in accordance with these criteria. The Statement of Needs will provide early notice of facility proposals to Borough Presidents, Community Boards, and the public at large. It will be accompanied by a map and text indicating the location and current use of all city properties and of state and federal facilities, as designated by the Charter. This will allow the public and city agencies to assess the existing distribution of facilities and analyze factors of compatibility and concentration. Section 204 also provides procedures for public review and comment on the Statement of Needs, permits Borough Presidents to propose locations for city facilities, and requires city

agencies to consider the statements that ensue from that review. Those provisions, together with these criteria, should provide a more open and systematic process for the consideration of facility sites. The criteria will have several applications in the Section 204 proceedings. The Mayor and city agencies will use them in formulating plans for facilities. Community Boards will refer to them in commenting on the Statement of Needs, and Borough Presidents will employ them in recommending specific sites for facilities. The City Planning Commission will consider them in acting on site selection and acquisition proposals subject to the Uniform Land Use Review Procedure (ULURP) and in the review of city office sites pursuant to Section 195 of the Charter. Sponsoring agencies will also observe them in actions that do not proceed through ULURP such as city contracts, facility reductions, and closings. Although recognizing that non-city agencies are not subject to these criteria, the Commission encourages all such agencies to consider the factors identified in these criteria when they are siting facilities in this city. Since the principles and procedures contained in these guidelines are new and untested, it is important to monitor and evaluate their effects. The Department of City Planning will undertake this evaluation and report its findings to the Commission and the Mayor within twenty-four months of adoption and periodically thereafter.

Article 1 Authority. Pursuant to Section 203 of the New York City Charter, the City Planning Commission is authorized to establish criteria for the location of new city facilities, the significant expansion of existing facilities, and the closing or significant reduction in size or service capacity of existing facilities.

Article 2 Purpose and Goals. The purpose of these criteria is to foster neighborhood stability and revitalization by furthering the fair distribution among communities of city facilities. Toward this end, the city shall seek to: a) Site facilities equitably by balancing the considerations of community needs for services, efficient and cost-effective service delivery, and the social, economic, and environmental impacts of city facilities upon surrounding areas; b) Base its siting and service allocation proposals on the city's long-range policies and strategies, sound planning, zoning, budgetary principles, and local and citywide land use and service delivery plans; c) Expand public participation by creating an open and systematic planning process in which communities are fully informed, early in the process, of the city's specific criteria for determining the need for a given facility and its proposed location, the consequences of not taking the proposed action, and the alternatives for satisfying the identified need; d) Foster consensus building to avoid undue delay or conflict in siting facilities providing essential city services; e) Plan for the fair distribution among communities of facilities providing local or neighborhood services in accordance with relative needs among communities for those services; f) Lessen disparities among communities in the level of responsibility each bears for facilities serving

citywide or regional needs; g) Preserve the social fabric of the city's diverse neighborhoods by avoiding undue concentrations of institutional uses in residential areas; and h) Promote government accountability by fully considering all potential negative effects, mitigating them as much as possible, and monitoring neighborhood impacts of facilities once they are built.

Article 3 Definitions. For purposes of these rules, the following definitions apply. a) City facility:¹ A facility providing city services whose location, expansion, closing or reduction in size is subject to control and supervision by a city agency², and which is:

- (i) operated by the city on property owned or leased by the city which is greater than 750 square feet in total floor area; or
- (ii) used primarily for a program or programs operated pursuant to a written agreement on behalf of the city which derives at least 50 percent and at least \$50,000 of its annual funding from the city³. b) New facility: A city facility newly established as a result of an acquisition, lease, construction, or contractual action or the substantial change in use of an existing facility⁴. c) Residential facility: A city facility with sleeping accommodations which provides temporary or transitional housing, provides for pre-trial detention or custody of sentenced inmates, or provides a significant amount of on-site support services for residents with special needs for supervision, care, or treatment⁵. d) Local or neighborhood facility: A city facility serving an area no larger than a community district or local service delivery district (pursuant to Section 2704 of the Charter), in which the majority of persons served by the facility live or work (see Attachment A). e) Regional or citywide facility: A facility which serves two or more community districts or local service delivery districts, an entire borough, or the city as a whole and which may be located in any of several different areas consistent with the specific criteria for that facility as described in the Citywide Statement of Needs pursuant to Section 204 of the Charter (see Attachment B). f) Significant expansion: An addition of real property by purchase, lease or interagency transfer, or construction of an enlargement, which would expand the lot area, floor area or capacity of a city facility by 25 percent or more and by at least 500 square feet. An expansion of less than 25 percent shall be deemed significant if it, together with expansions made in the prior three-year period, would expand the facility by 25 percent or more and by at least 500 square feet. g) Significant reduction: A surrender or discontinuance of the use of real property that would reduce the size or capacity to deliver service of a city facility by 25 percent or more. A reduction of less than 25 percent shall be

deemed significant if it, together with reductions made in the prior three-year period, would reduce the facility by 25 percent or more.

Article 4 Criteria for Siting or Expanding Facilities. The following criteria and procedures apply to the siting of all new facilities other than administrative offices and data processing facilities and the significant expansion of such facilities.

4.1 The sponsoring agency and, for actions subject to the Uniform Land Use Review Procedure (ULURP) or review pursuant to Section 195 of the Charter, the City Planning Commission, shall consider the following criteria: a) Compatibility of the facility with existing facilities and programs, both city and non-city, in the immediate vicinity of the site. b) Extent to which neighborhood character would be adversely affected by a concentration of city and/or non-city facilities. c) Suitability of the site to provide cost-effective delivery of the intended services. Consideration of sites shall include properties not under city ownership, unless the agency provides a written explanation of why it is not reasonable to do so in this instance. d) Consistency with the locational and other specific criteria for the facility identified in the Statement of Needs or, if the facility is not listed in the Statement, in a subsequent submission to a Borough President. e) Consistency with any plan adopted pursuant to Section 197-a of the Charter.

Article 5 Criteria for Siting or Expanding Local/ Neighborhood Facilities. In addition to the criteria and procedures stated in Article 4, the following criteria and procedures apply to the siting of new local or neighborhood facilities other than administrative offices and data processing facilities, and the significant expansion of such facilities (see Attachment A).

5.1 The sponsoring agency and, for actions subject to ULURP or review pursuant to Section 195 of the Charter, the City Planning Commission, shall consider the following criteria: a) Need for the facility or expansion in the community or local service delivery district. The sponsoring agency should prepare an analysis which identifies the conditions or characteristics that indicate need within a local area (e.g., infant mortality rates, facility utilization rates, emergency response time, parkland/population ratios) and which assesses relative needs among communities for the service provided by the facility. New or expanded facilities should, wherever possible, be located in areas with low ratios of service supply to service demand. b) Accessibility of the site to those it is intended to serve.

5.2 A Community Board may choose to designate or establish a committee to monitor selected local facilities after siting approval pursuant to these criteria. Following site selection and approval for such a facility, the sponsoring agency and Community Board shall jointly establish a mutually acceptable procedure by which the agency periodically reports to the committee regarding the plans and procedures that may affect

the compatibility of the facility with the surrounding community and responds to community concerns.

Article 6 Criteria for Siting or Expanding Regional/ Citywide Facilities. In addition to the criteria and procedures stated in Article 4, the following criteria and procedures apply to the siting of new regional and citywide facilities other than administrative offices and data processing facilities, and the significant expansion of such facilities (see Attachment B).

6.1 The sponsoring agency and, for actions subject to ULURP or review pursuant to Section 195 of the Charter, the City Planning Commission, shall consider the following criteria: a) Need for the facility or expansion. Need shall be established in a citywide or borough-wide service plan or, as applicable, by inclusion in the city's ten-year capital strategy, four-year capital program, or other analyses of service needs. b) Distribution of similar facilities throughout the city. To promote the fair geographic distribution of facilities, the sponsoring agency should examine the distribution among the boroughs of existing and proposed facilities, both city and non-city, that provide similar services, in addition to the availability of appropriately zoned sites. c) Size of the facility. To lessen local impacts and increase broad distribution of facilities, the new facility or expansion should not exceed the minimum size necessary to achieve efficient and cost-effective delivery of services to meet existing and projected needs. d) Adequacy of the streets and transit to handle the volume and frequency of traffic generated by the facility.

6.2 Where practicable, the Mayor may initiate and sponsor a consensus building process to determine the location of a proposed regional facility. A Borough President may submit a written request for such a process if the request is made within 90 days of publication of the Statement of Needs or, if the facility is not listed in the Statement, within 30 days of a subsequent submission to the Borough President. In the consensus building process, representatives of affected interests will convene to assess potential sites in accordance with these criteria and the specific criteria set forth in the Statement of Needs. The participants may include but need not be limited to representatives of the Mayor, the sponsoring agency, the Borough President(s), and the affected Community Board(s). The participants may review any issue relevant to site selection under these criteria. The process shall be completed within a reasonable time period to be determined by the Mayor. If location of the facility is subject to ULURP, the process shall be completed prior to submission of a ULURP application. If the participants (including the sponsoring agency) reach consensus, the agency will submit whatever agreements were reached regarding the facility and site to the City Planning Commission as part of its ULURP application for the site. If no such consensus is reached, the sponsoring agency may initiate ULURP, if applicable, for its proposed site.

6.3 Upon the request of the Borough President and/or Community Board, a sponsoring agency and Community Board shall establish a facility monitoring committee, or designate an existing Community Board committee, to monitor a facility following selection and approval of its site. The agency shall inform the committee of plans and procedures that may affect the compatibility of the facility with the surrounding community. Once the facility is constructed, the sponsoring agency shall meet with the committee according to a schedule established by the committee and agency to report on the status of those plans and procedures and to respond to community concerns. The committee may also submit reports to the agency head addressing outstanding issues. The agency head shall respond to the committee's report within 45 days and shall identify the actions, if any, that the agency plans in response to such concerns.

6.4 Transportation and Waste Management Facilities. Transportation and waste management facilities (see Attachment B) are subject to the following criteria in addition to those stated in Article 4 and Sections 6.1, 6.2, and 6.3.

6.41 The proposed site should be optimally located to promote effective service delivery in that any alternative site actively considered by the sponsoring agency or identified pursuant to Section 204(f) of the Charter would add significantly to the cost of constructing or operating the facility or would significantly impair effective service delivery.

6.42 In order to avoid aggregate noise, odor, or air quality impacts on adjacent residential areas, the sponsoring agency and the City Planning Commission, in its review of the proposal, shall take into consideration the number and proximity of existing city and non-city facilities, situated within approximately a one-half mile radius of the proposed site, which have similar environmental impacts.

6.5 Residential Facilities. Regional or citywide residential facilities (see Attachment B) are subject to the following criteria in addition to those stated in Article 4 and Sections 6.1, 6.2, and 6.3.

6.51 Undue concentration or clustering of city and non-city facilities providing similar services or serving a similar population should be avoided in residential areas.

6.52 Necessary support services for the facility and its residents should be available or provided.

6.53 In community districts with a high ratio* of residential facility beds to population, the proposed siting shall be subject to the following additional considerations: a) Whether the facility, in combination with other similar city and non-city facilities within a defined area surrounding the site (approximately a half-mile radius, adjusted for significant physical boundaries), would have a significant cumulative negative impact

on neighborhood character. b) Whether the site is well located for efficient service delivery. c) Whether any alternative sites actively considered by the sponsoring agency or identified pursuant to Section 204(f) of the Charter which are in community districts with lower ratios of residential facility beds to population than the citywide average would add significantly to the cost of constructing or operating the facility or would impair service delivery. To facilitate this evaluation, the Department of City Planning will publish annually an index of the number of beds per thousand population, by type of residential facility (as set forth in Appendix C) and overall, in each community district. The index will be based upon the number of beds in all city, state, federal, and private facilities in operation or approved for operation.

Article 7 Criteria for Siting or Expanding Administrative Offices and Data Processing Facilities. The following criteria apply to the siting of new city administrative offices and data processing facilities and the significant expansion of such facilities, pursuant to Section 195 of the City Charter.

7.1 The sponsoring agency and the City Planning Commission shall consider the following criteria: a) Suitability of the site to provide cost-effective operations. b) Suitability of the site for operational efficiency, taking into consideration its accessibility to staff, the public and/or other sectors of city government. c) Consistency with the locational and other specific criteria for the facility stated in the Statement of Needs. d) Whether the facility can be located so as to support development and revitalization of the city's regional business districts without constraining operational efficiency.

Article 8 Criteria for Closing or Reducing Facilities. The following criteria and procedures apply to the closing of existing facilities and the significant reduction in size or capacity to deliver service of existing facilities.

8.1 The sponsoring agency shall consider the following criteria: a) The extent to which the closing or reduction would create or significantly increase any existing imbalance among communities of service levels relative to need. Wherever possible, such actions should be proposed for areas with high ratios of service supply to service demand. b) Consistency with the specific criteria for selecting the facility for closure or reduction as identified in the Statement of Needs.

8.2 In proposing facility closings or reductions, the sponsoring agency shall consult with the affected Community Board(s) and Borough President about the alternatives within the district or borough, if any, for achieving the planned reduction and the measures to be taken to ensure adequate levels of service.

Article 9 Actions not Subject to the Uniform Land Use Review Procedure or Section 195. 9.1 Whenever an agency takes an action with respect to a city facility that is subject to these criteria but is not subject to ULURP or to Charter Section 195 review, the agency shall submit a statement to the Mayor, with copies to the affected Community Board(s), Borough President, and Department of City Planning, which describes the agency's consideration and application of the relevant sections of these criteria, and states the reasons for any inconsistencies.

Attachment A

Local/Neighborhood Facilities*

Branch libraries Community cultural programs Community health/mental health services Community-based social programs Day care centers Drop-off recycling centers Employment centers Fire stations Local, non-residential drug prevention and/or treatment centers Local parks Parking lots/garages Police precincts Sanitation garages Senior centers * List is illustrative and should not be considered to include all such facilities.

Attachment B

Regional/Citywide Facilities*

Administrative offices Courts Data processing facilities Department of Health centers Income maintenance centers Maintenance/storage facilities Museums, zoos, performance centers, galleries and gardens Regional, non-residential drug prevention and/or treatment centers Regional parks

Transportation and Waste Management Facilities:

Airports, heliports Ferry terminals Sewage treatment plants Sludge management and transfer facilities Solid waste transfer and recycling facilities Solid waste landfills Solid waste incinerators, resource recovery plants

Residential Facilities:

Group homes/halfway houses Hospices Nursing homes/ health-related facilities Prisons, jails, detention, remand facilities Residential facilities for children Residential substance abuse facilities Secure and non-secure detention facilities for children Supported housing for people with mental health or physical problems Temporary housing Transitional housing * List is illustrative and should not be considered to include all such facilities.

Attachment C

*Types of Residential Facilities (as referenced in Section 6.53)**

a) Correctional facilities, including prisons, jails, detention and remand facilities, and secure detention for children b) Nursing homes and health-related facilities, including hospices c) Small residential care facilities and temporary housing facilities, serving no more than 25 people, including group homes, halfway houses, residential facilities for children, residential substance abuse and mental health/retardation facilities, supported housing, shelters, temporary and transitional housing, non-secure detention for children d) Large temporary and transitional housing facilities, providing shelter or transitional housing for more than 25 people e) Large residential care facilities, serving more than 25 people, including halfway houses, residential facilities for children, homes for adults, residential substance abuse and mental health/retardation facilities, supported housing, psychiatric centers * Lists by type are illustrative and should not be considered to include all such facilities.

Appendix 3

Community District Beds-to-Population Ratios*

Community District	Population, 1999	1999 Beds	1999 Ratio	Population, 2014	2015 Beds	2015 Ratio
QN 1	188,500	18,358	97.4	172,617	11,943	69.2
QN 14	100,600	5,906	58.7	117,470	6,159	52.4
MN 11	110,500	6,517	59.0	120,603	6,277	52.0
BX 3 & 6	126,400	3,516	27.8	166,534	7,350	44.1
BX 11	98,300	3,661	37.2	129,963	4,790	36.9
BX 8	97,000	3,850	39.7	108,485	3,863	35.6
BX 1 & 2	116,600	3,889	33.4	157,561	5,317	33.7
BX 4	118,800	3,360	28.3	141,467	4,696	33.2
BK 16	84,900	1,665	19.6	124,182	3,915	31.5
MN 4 & 5	127,900	4,808	37.6	146,311	4,553	31.1
BX 7	128,600	2,335	18.2	125,254	3,542	28.3
BK 2	94,500	4,832	51.1	129,778	3,628	28.0
BK 3	138,700	1,720	12.4	137,830	3,589	26.0
BK 5	161,300	2,586	16.0	151,192	3,806	25.2
MN 10	99,500	2,657	26.7	129,951	3,053	23.5
BX 12	129,600	2,518	19.4	141,622	3,248	22.9
SI 2	113,900	3,195	28.1	131,697	2,999	22.8
BK 9	110,700	1,701	15.4	110,823	2,311	20.9
MN 7	211,000	4,013	19.0	196,398	4,094	20.8
BK 13	102,600	2,023	19.7	106,296	2,070	19.5
SI 1	137,800	2,917	21.2	173,862	3,197	18.4
BK 8	96,900	1,953	20.2	123,963	2,266	18.3
MN 3	161,600	3,307	20.5	163,328	2,966	18.2
MN 9	107,000	1,571	14.7	130,249	2,361	18.1
BX 5	118,400	2,154	18.2	132,462	2,372	17.9
QN 13	177,000	3,171	17.9	200,341	3,455	17.2
MN 6	133,700	2,354	17.6	145,669	2,351	16.1
BX 10	97,900	1,392	14.2	123,832	1,895	15.3
QN 12	201,000	3,358	16.7	237,956	3,601	15.1
BK 7	102,500	1,406	13.7	151,077	2,269	15.0
QN 4	137,000	1,320	9.6	144,567	2,131	14.7
QN 8	130,400	2,072	15.9	155,984	2,258	14.5
BK 15	143,500	1,097	7.6	147,633	1,972	13.4
QN 7	221,800	3,063	13.8	250,047	3,254	13.0
MN 1 & 2	119,500	2,257	18.9	152,088	1,863	12.2
BK 17	161,300	618	3.8	135,757	1,635	12.0
MN 8	210,900	2,990	14.2	219,382	2,583	11.8
BK 18	162,400	1,738	10.7	208,494	2,442	11.7
BK 4	102,600	1,253	12.2	138,660	1,618	11.7
BK 1	156,000	900	5.8	149,379	1,631	10.9
BK 12	160,000	1,319	8.2	166,578	1,630	9.8
MN 12	198,200	2,380	12.0	214,419	1,887	8.8
BK 14	160,000	990	6.2	158,531	1,372	8.7
QN 11	108,000	805	7.5	121,291	1,039	8.6
QN 3	128,900	730	5.7	181,089	1,529	8.4
BK 6	102,200	1,022	10.0	114,833	960	8.4
QN 2	94,800	2,067	21.8	136,080	950	7.0
BK 11	150,000	1,225	8.2	184,656	1,258	6.8
QN 9	112,600	1,090	9.7	148,606	985	6.6
BX 9	165,700	1,093	6.6	186,386	1,209	6.5
BK 10	110,600	530	4.8	131,139	773	5.9
QN 6	107,000	511	4.8	111,741	604	5.4
QN 5	149,100	902	6.0	167,945	877	5.2
QN 10	107,800	86	0.8	134,884	431	3.2
SI 3	127,000	1,124	8.9	165,963	461	2.8

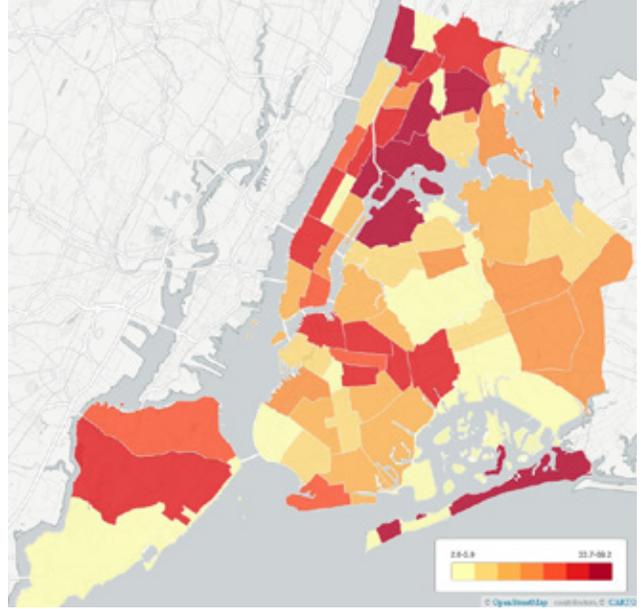
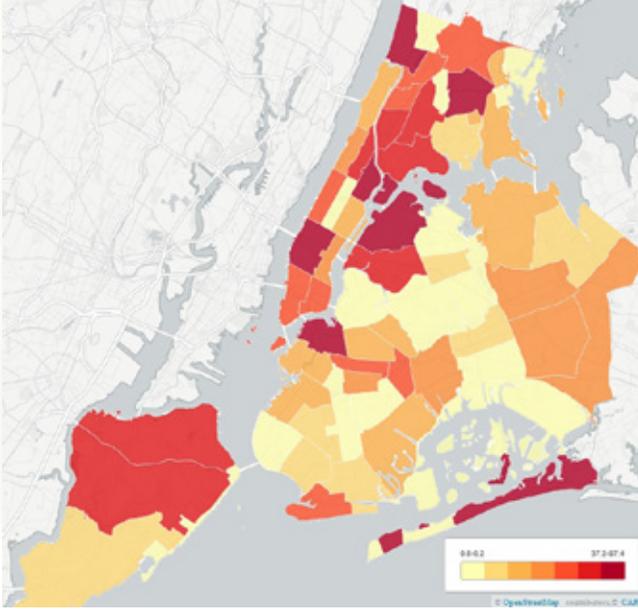
*2014 Population taken from the 2014 5-year American Community Survey (ACS). Certain community districts are combined because the ACS does not estimate population below this level in between decennial Censuses.

Appendix 4

Residential Bed Maps

Residential bed density, 1999

Residential bed density, 2015



Endnotes

- 1 Been, Vicki. "What's Fairness Got to Do With It? Environmental Justice and the Siting of Locally Undesirable Land Uses" 78 Cornell L. Rv. 1001 (1993) Available at: <http://scholarship.law.cornell.edu/clr/vol78/iss6/1>
- 2 Frederitck A.O. Schwartz, Jr. and Eric Lane, "The Policy and Politics of Charter Making: The Story of New York City's 1989 Charter." New York Law School Law Review 723 (1998).
- 3 Transcript of the minutes of the Subcommittee on Landmarks, Public Siting and Maritime Uses, April 12, 2011. Available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=863861&GUID=03EC3430-14DA-4581-B8CB-2D57B2DE82C9&Options=&Search=>
- 4 According to the Fair Share guide, "As a courtesy, copies should also be sent to the Speaker of the City Council and to each affected City Council member."
- 5 http://www1.nyc.gov/assets/planning/download/pdf/applicants/applicant-portal/fair_share_analysis_description.pdf
- 6 <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=863861&GUID=03EC3430-14DA-4581-B8CB-2D57B2DE82C9&Options=&Search=>
- 7 Transcript of the minutes of the Subcommittee on Landmarks, Public Siting and Maritime Uses, April 12, 2011. Available at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=863861&GUID=03EC3430-14DA-4581-B8CB-2D57B2DE82C9&Options=&Search=>
- 8 Final Comprehensive Solid Waste Management Plan Executive Summary. Available at http://www1.nyc.gov/assets/dsny/docs/about_swmp_exec_summary_0815.pdf.
- 9 Ibid.
- 10 Article 9 letter from Steven Banks, Commissioner of the Human Resources Administration to Mayor Bill de Blasio, July 14, 2016. Forwarded to Speaker Melissa Mark-Viverito's office on July 26, 2016.
- 11 Ibid.
- 12 Citywide Statement of Needs For City Facilities/Fiscal Years 2016 and 2017. Available at: https://www1.nyc.gov/assets/planning/download/pdf/about/publications/son_16_17.pdf
- 13 Citywide Statement of Needs For City Facilities/Fiscal Years 2017 and 2018. Available at: http://www1.nyc.gov/assets/planning/download/pdf/about/publications/son_17_18.pdf
- 14 For a representative example, see "Implementation of the Citywide Statement of Needs," p. 60-61 in Mayor's Management Report Fiscal 2015 Additional Tables at http://www1.nyc.gov/assets/operations/downloads/pdf/mmr2015/full_report_additional_tables_2015.pdf
- 15 "Down and Out: How New York City Places Its Homeless Shelters." Available at: https://comptroller.nyc.gov/wp-content/uploads/documents/20130509_NYC_ShelterSiteReport_v24_May.pdf.
- 16 Silver v. Dinkins, <https://casetext.com/case/matter-of-silver-v-dinkins>

17 The report's authors are grateful to "The Neighborly Substation," by Hope Cohen of the Manhattan

Institute's Center for Rethinking Development for shaping our thoughts on mitigation. Report available at: http://www.manhattan-institute.org/pdf/crd_neighborly_substation.pdf.

18 "For New York's Best New Public Sculpture, Thank the Sanitation Department." Available at: [http://](http://www.nytimes.com/2015/12/22/arts/design/in-sanitation-and-salt-complex-in-tribeca-a-salutary-lesson-in-urban-responsibility.html?_r=0)

www.nytimes.com/2015/12/22/arts/design/in-sanitation-and-salt-complex-in-tribeca-a-salutary-lesson-in-urban-responsibility.html?_r=0.

