

Fair Share Planning for Locally Undesirable Land Uses (LULUs)

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I. Introduction

To function, every city requires certain land uses that most people would rather avoid. Planners refer to these kinds of land uses as *Locally Undesirable Land Uses* (LULUs). We define a LULU as a land use that consistently generates local opposition in the community in which it is sited. Local communities almost always perceive LULUs as bringing negative externalities, but planners generally understand LULUs to be necessary for the proper functioning of the local municipality or the broader region. If somewhat tautological, this definition reflects the political reality of LULUs: unwanted yet necessary.¹

1. Video Interview with Muzzy Rosenblatt, Director and CEO, Bowery Residents' Committee (Nov. 8, 2022) ("Nobody wants a LULU and somebody's got to get it . . ."); Video Interview with John Mangin, Director of Housing Division, Department of City Planning (Oct. 28, 2022) ("There are things communities really don't want . . ."); Interview with Roderick Hills, Professor of Law, New York University School of Law, in N.Y.C. (Oct. 6, 2022) ("Everyone agrees certain uses are regionally necessary, but because they're LULUs, everyone excludes them from

Part I of this paper provides an overview on how New York City (NYC) came to adopt the Fair Share Criteria (FSC), how the requirements under FSC are supposed to work within a broader system of allocating land use, and how the requirements have performed in reality over the past thirty years since FSC's adoption. Part II of this paper dives deeper into how FSC has been used (or not used) to site three particular types of LULUs that are particularly difficult to site: homeless shelters, detention facilities, and waste-transfer stations. Part III provides several potential recommendations for improving the Fair Share system inspired, in part, by foundational features from generations of New York politics.

A. History of Fair Share in NYC

The city government controls the siting of city-owned or -operated LULUs. In NYC, the government has historically sited LULUs unevenly along geographical and social axes. To this day, low-income communities of color contain a disproportionate number of LULUs.²

Several key factors drive this uneven distribution. First, the city came to own many abandoned properties concentrated in the city's poorest neighborhoods in the mid-1970s. The city used much of this land to site city facilities, including LULUs, which often resulted in a concentration of LULUs in those poor neighborhoods.³

Second, while most communities oppose LULUs being built in their "backyard," not all communities have equal resources to back their opposition. Wealthier and predominantly white neighborhoods

their neighborhood."); Video Interview with Michael Freedman-Schnapp, Managing Director, Financial Advisory, Forsyth Street Advisors (Oct. 25, 2022) ("Just empirically, people don't want these things, regardless of externalities . . . [but] there are regional benefits to most of the things that we're talking about."); Video Interview with Eric Lane, Professor of Law, Maurice A. Deane School of Law at Hofstra University (Oct. 7, 2022) ("[L]egitimate uses of the city . . . were all getting dumped in the poorer parts of the city. And they would wake up one morning and there would be a new homeless shelter or something else."); Video Interview with Department of City Planning (DCP) Representatives (Oct. 31, 2022) ("One way to define [a LULU] is whatever a particular community doesn't want There's a whole litany of necessary facilities that nobody really wants.").

2. See Apps. A-C; Vicki Been, *What's Fairness Got to Do with It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 Cornell L. Rev. 1001 (1993); N.Y.C. COUNCIL, DOING OUR FAIR SHARE, GETTING OUR FAIR SHARE 2 (2017); N.Y.C. COMPTROLLER'S OFFICE, DOWN AND OUT: HOW NEW YORK CITY PLACES ITS HOMELESS SHELTERS 4 (2013).

3. William Valletta, *Siting Public Facilities on a Fair Share Basis in New York City*, 25 URB. LAW. 1, 2 (1993).

tend to have more financial resources and political connections in city government to fend off LULUs. Lower income and majority people-of-color neighborhoods tend to lack those resources, hindering their ability to mount effective protest. Over time, city government has come to view siting in these communities as the “path of least resistance.”⁴

Third, city agencies must pay for the land on which they plan to site city facilities. It tends to be cheaper to site facilities in low-income, minority neighborhoods with lower property costs. The governmental logic of cost-efficiency leads city agencies to site LULUs in those neighborhoods.

In 1989, as NYC rewrote its charter of government, the city’s Charter Revision Commission took seriously the concern that undesirable city facilities were being concentrated in low-income neighborhoods of color.⁵ To help solve this problem, the Commission added “Fair Share” principles and processes to the charter. According to Professor Eric Lane, who was executive director and counsel to the Commission, Fair Share was intended largely as a tool to increase the transparency of the facility-siting process, giving city agencies better data to avoid overconcentration and giving local communities greater ability to resist such concentration.⁶

B. Description of Fair Share

The “Fair Share” laws, in the context of NYC planning, refer to Sections 203 and 204 of the City Charter. Section 203 directs the City Planning Commission (CPC) to promulgate rules for the siting of new city facilities or for major changes to existing facilities (i.e., expansion, closing, reductions). Those rules are commonly known as the “Fair Share Criteria.”⁷

The Fair Share Criteria (FSC) consist of nine articles.⁸ Articles 4 through 6 provide the substantive criteria a city agency must

4. N.Y.C. COUNCIL, *supra* note 2, at 5.

5. Frederick A.O. Schwarz Jr. & Eric Lane, *The Policy and Politics of Charter Making: The Story of New York City’s 1989 Charter*, 42 N.Y.L. SCH. L. REV. 723, 870 (1998) (“Many community advocates contended, and the Commission agreed, that some communities were overburdened by undesirable City facilities There was early attention to this issue in a lengthy legislative hearing on March 2.”); Video Interview with Eric Lane, *supra* note 1.

6. See Schwarz Jr. & Lane, *supra* note 5; Video Interview with Eric Lane, *supra* note 1.

7. N.Y.C., N.Y., New York City Charter § 203 (1989).

8. N.Y.C. Plan. Comm’n, Criteria for the Location of City Facilities, Rules of the City of New York, tit. 62, app. A (2003) [hereinafter FSC].

consider when siting a new facility or expanding an existing facility. The criteria require a siting agency, also known as the “sponsoring agency,” to consider factors including the presence of already existing facilities,⁹ cost-effectiveness,¹⁰ and how the facility will satisfy the needs articulated in the annual Statement of Needs (expanded on below).¹¹ Article 6 articulates specific additional criteria for consideration when siting residential facilities (including homeless shelters and detention facilities), transportation facilities, and waste-management facilities. For these kinds of facilities, Article 6 directs the sponsoring agency and CPC to consider whether there is an already-existing overconcentration of similar facilities. In certain circumstances, Article 6 directs the city agency to consider alternative sites to the one proposed.¹² Article 9 details the criteria and processes required when an agency sites a facility through a city contract with a service provider (e.g., New York City contracts with a nonprofit to operate a homeless shelter). Article 9 siting actions are not subject to the Uniform Land Use Review Procedure (ULURP).¹³

Section 204 of the Charter requires the city to provide advance notice and certain information about city facility sitings, expansions, closings, and reductions.¹⁴ First, the mayor, in conjunction with several umbrella city agencies (the Department of City Planning (DCP), Department of Design and Construction (DDC), and Department of Citywide Administrative Services (DCAS)), must publish an annual Statement of Needs (SON) that compiles all sitings subject to the FSC, which are planned for the next two fiscal years. This SON is sourced from the submissions of each operational government agency (e.g., the Department of Homeless Services (DHS), the Department of Corrections (DOC), the Department of Sanitation (DOS), etc.), and each agency must consult similar statements prepared by each Community Board (CB) and coordinate with those CBs.¹⁵ The actual level of communication and consultation between city agencies and CBs varies.¹⁶ After the SON is published, CBs and Borough Presidents (BPs) have ninety days to comment. BPs may

9. *Id.* §§ 4.1(a), 4.1(b), 6.1(b).

10. *Id.* § 4.1(c).

11. *Id.* § 4.1(d).

12. *Id.* §§ 6.41, 6.42, 6.51, 6.53.

13. FSC, *supra* note 8, § 9.

14. N.Y.C., N.Y., New York City Charter § 204 (1989).

15. N.Y.C. COUNCIL, *supra* note 3, at 5.

16. Video Interview with Department of City Planning Representatives, *supra* note 1.

propose alternative locations for any of the proposed sitings within their borough, though such proposals are purely advisory.¹⁷

In addition to the annual SON, Section 204 requires city agencies to produce either a “Fair Share Statement” or Article 9 Statement¹⁸ whenever siting specific types of city facilities, regardless of whether that facility was proposed in the SON. The statement must explain how the proposed siting satisfies the FSC, how it fits into the broader needs stated in the SON, and how it takes into account any comments from community members (such as the relevant BPs and CBs).

Lastly, Section 204 requires the city to publish a map containing the locations of all city facilities and their present or future planned uses. This map encapsulates city-owned property, as well as facilities operated by or on behalf of the state or federal governments. The Charter and the FSC define the specific kinds of city facilities that are subject to Fair Share,¹⁹ but, in simple terms, these facilities include “[j]ust about every physical space larger than a one-bedroom apartment that plays a role in delivering city services.”²⁰ This includes both facilities on city-owned or -leased land and facilities on non-city land that are primarily used for programs that derive at least fifty percent of their budget and more than \$50K from contracts with the City.²¹

C. *What Is “Fair”?*

There is no clear consensus on what, exactly, is the “fairest” way to site city facilities, especially when each type of facility contributes different benefits and burdens. Nor is there an easy answer to the question: “Fair to whom?” The FSC arose out of a sense of unfairness from the perspective of those living in communities hosting LULUs, but many commentators and activists argue that the city government has a fundamental responsibility to the clients utilizing the services of these supposedly “undesirable” facilities.

We argue that “fairness” must be considered from both the perspective of communities and of the clients who rely on city facilities.

17. Video Interview with John Douglas, Director of Land Use, & Erin Buchanan, Deputy Director of Land Use, Brooklyn Borough President’s Office (Nov. 3, 2022).

18. Video Interview with Department of City Planning Representatives, *supra* note 1.

19. N.Y.C., N.Y., New York City Charter § 203(c); FSC § 3(a).

20. N.Y.C. COUNCIL, *supra* note 3, at 6.

21. FSC § 3(a).

From the perspective of communities, we define “fairness” in siting as an equal geographical distribution of facilities and facility capacity. For the sake of definitional clarity, we consider a Community District (CD) to be overconcentrated whenever it has more than the number of facilities each CD would have if facilities were perfectly geographically distributed between each CD.²² We are particularly concerned by an overconcentrations of LULUs in low-income neighborhoods of color, given the history of concentration in these neighborhoods.

But we also recognize that an equal geographic distribution of certain city facilities may not always best serve the needs of the clients of those facilities. “Fairness” from the perspective of a facility’s clientele means that services are accessible and delivered with dignity. To take an extreme example: siting a shelter in the southern tip of Staten Island, isolated from public transportation and other social services, may satisfy a dispersion goal but be a great disservice to the shelter’s clients. In these situations, it may be preferable to site a new facility in an “overconcentrated” district over an “under-concentrated” one. However, we think that the interests of clients, and those of the host community, are aligned more often than not; physically dispersed facilities are generally better able to serve clients throughout the city. Perhaps most obvious in the shelter context, physically dispersed facilities can help avoid the pitfalls of isolated concentrated poverty and provide greater choice to clients.

D. Fair Share Procedures Governing the Siting of Facilities in NYC

The FSC are implicated through two main procedures that city agencies must utilize to site, expand, reduce the capacity of, or close a city facility. First is the ULURP (Charter Section 197-c),²³ which is triggered whenever the city “wishes to acquire real property.”²⁴ As part of its ULURP application, the city must submit a Fair Share analysis of the site and its planned use, describing how the planned use satisfies the FSC, how comments procured from CBs or BPs during pre-ULURP consultations were incorporated, and how the application responds to the SON.

22. In many cases, the relevant measurement may be facility capacity, not simply the total number of facilities. In some contexts, the capacity of facilities can be measured by residential beds, in others the tonnage of waste.

23. See diagram of ULURP process in App. F.

24. N.Y.C. COUNCIL, *supra* note 3, at 7 (internal quotes omitted) (noting that the property may be acquired by “purchase, condemnation, exchange or lease”).

The second procedure is Article 9 of the FSC, which covers sitings, expansions, reductions, and closings of facilities “that result from City contracts with service providers.”²⁵ This method involves a request for proposal (RFP) to private organizations. Most homeless shelters and *private* waste transfer stations are sited through this contracted siting process. Under Article 9, the city agency must complete a Fair Share Statement explaining how the FSC were applied and must send that statement to the mayor, the Director of DCP, and the relevant CB and BP.²⁶

E. Agency Application of Fair Share

The procedural requirements under Fair Share are clear, but the *substantive* requirements are much more nebulous. Several former and current employees of city government claimed that the city thoughtfully considers the FSC when siting a facility but also acknowledged that the FSC are just one of a wide range of important considerations.²⁷ Given these competing considerations, city agencies do not necessarily prioritize the equitable distribution of LULUs when siting facilities, but several of our interviewees thought the FSC did help push the needle in a more equitable direction.²⁸ Others argued that the city simply goes through the motions of Fair Share as an afterthought to provide political cover and that Fair Share is an empty promise that lacks “teeth.”²⁹ Yet another perspective is that Fair Share makes it harder for the city to site needed facilities because *all* communities are empowered to push back: needed facilities remain unbuilt, and inequitable distribution remains static because the city has as much difficulty siting new facilities in under-concentrated neighborhoods as in overconcentrated neighborhoods.³⁰ Last, some

25. *Id.*

26. DCP sometimes provides guidance in preparing these statements according to our interview with representatives from DCP. Video Interview with DCP Representatives, *supra* note 1.

27. Video Interview with Carl Weisbrod, Senior Advisor, HR&A Advisors Inc. (Nov. 11, 2022) (“There’s never been a case where the CPC has rejected a siting on Fair Share Grounds.”); Video Interview with Ken Knuckles, Vice Chair, City Planning Commission (Nov. 3, 2022); Video Interview with Department of City Representatives, *supra* note 1; Video Interview with Muzzy Rosenblatt, *supra* note 1.

28. Video Interview with Department of City Planning Representatives, *supra* note 1.

29. Video Interview with Michael Freedman-Schnapp, *supra* note 1; Interview with Roderick Hills, *supra* note 1; NEW YORK CITY COUNCIL, *supra* note 2, at 21.

30. Joseph B. Rose, *A Critical Assessment of New York City’s Fair Share Criteria*, 59 J. AM. PLAN. ASS’N 97, 99–100 (1993) (“The Fair Share process . . . neglects the necessity for such [fair planning] decisions to generate and sustain the political

argued the city is currently intentionally circumventing Fair Share through certain “loopholes.”³¹ We proceed to explore the veracity of these opinions as applied to the past sitings of three kinds of LULUs.

II. The Siting of Problematic LULUs

This section explores how FSC has been used (or not used) to site LULUs. We focus our analysis on three types of LULUs that appear the most politically contentious to site: homeless shelters, detention facilities, and waste transfer stations.³²

For each category of LULUs, our research methodology was multifaceted: we researched the current siting processes, mapped out the existing distribution of the LULUs using NYC data, interviewed various stakeholders and experts, and looked at any relevant case law. Putting all the pieces together, we looked at a particular case study for each LULU in the context of the rest of our research. Through these different lenses, we sought to understand what was working well and what was not in the current procedures, and to find solutions that would enable the City to site needed facilities while also siting them more fairly.

A. Homeless Shelters (Temporary Housing/Transitional Housing)

HOW HOMELESS SHELTERS ARE SITED IN NYC

Today, homeless shelters are primarily sited through the FSC Article 9 process or an “emergency variation” of this process, rarely through ULURP.³³ Pursuant to the standard Article 9 processes, DHS must file a Fair Share Statement as described earlier.³⁴ Since at least

will needed to carry out the actual construction of a facility.”); Interview with Roderrick Hills, *supra* note 1; Video Interview with John Mangin, *supra* note 1.

31. One such “loophole” is the use of emergency processes to site homeless shelters. See discussion *infra* Section II.A. How Homeless Shelters Are Sited in NYC; Telephone Interview with Jacqueline McMickens, Founder and Lawyer, Jacqueline McMickens & Associates, PLLC (Nov. 9, 2022).

32. We determined these LULUs were particularly problematic because of their prevalence in news stories and in court cases invoking the Fair Share Criteria. Our interviews also generally mentioned these three facilities as particularly politically contentious.

33. N.Y.C. COMPTROLLER’S OFFICE, *supra* note 2, at 8 (“We learned through a FOIL request to DCP that there are no DHS facilities subject to ULURP nor have there been in the ‘last number of years since DHS enters into a City contract with a not-for-profit provider to run the shelters and DHS goes through the mayor’s Office of Contracts Services.’”).

34. See *supra* Section I.D.

2000, DHS has contracted with private service providers to operate city shelters and chooses these providers through an Open-Ended RFP process (OERFP), in which contracts are awarded on a rolling basis.³⁵ In 2009, DHS revised OERFP application procedures, requiring applicants to submit written notification to affected CBs *prior* to submitting an application to DHS. Soon after, in 2010, DHS, in conjunction with the NYC Comptroller's Office and Corporation Counsel, declared the dramatic rise of homelessness to be an emergency, necessitating the use of emergency procurement methods. Under this emergency declaration, the siting process for shelters "effectively does not need to follow the [c]ity's standard public involvement process and a Fair Share analysis."³⁶ Shelters sited under this emergency declaration are technically temporary and, in theory, must undergo the standard review processes to become permanent, but in practice these "temporary" shelters have remained open indefinitely as the homeless population continues to grow.³⁷

CURRENT DISTRIBUTION OF HOMELESS SHELTERS

Maps in Appendix A show the geographic distribution of homeless shelters in 2022.³⁸ In line with general LULU trends, CDs with above average poverty rates and higher proportions of minorities also tend to host the most shelters. The five Community Districts with the highest number of shelters are Brooklyn 16 (with 22 shelters, this CD has a 29% poverty rate, and 96.5% of its residents are non-white), Bronx 6 (with 21 shelters, this CD has a 30% poverty rate, and 93.6% of its residents are non-white), Manhattan 10 (with 19 shelters, this CD has a 20% poverty rate, and 84.8% of its residents are non-white), Bronx 4 (with 16 shelters, this CD has a 32% poverty rate, and 97.8% of its residents are non-white), and Manhattan 11 (with 16 shelters, this CD has a 22% poverty rate, and 92.0% of its residents are nonwhite).³⁹ The most overconcentrated CDs house between four and six percent of NYC's total shelters.⁴⁰ As there are

35. N.Y.C. COMPTROLLER'S OFFICE, *supra* note 2, at 10–11.

36. *Id.*

37. Telephone Interview with Jacqueline McMickens, *supra* note 31; N.Y.C. COMPTROLLER'S OFFICE, *supra* note 5, at 22 (noting temporary shelters are becoming pathways for establishing permanent shelters in the same location).

38. See *infra* App. A; see also NYC DEP'T OF HOMELESS SERVS., A MAP OF NYC DHS SHELTER LOCATIONS AS OF JULY 2022 (2022), <https://www.scribd.com/document/600403219/A-map-of-NYC-DHS-shelter-locations-as-of-July-2022#>.

39. See *supra* App. A, Table 1, Table 2.

40. See *supra* App. A, Table 1.

59 total CDs in NYC, if shelters were dispersed evenly between CDs, each CD would house about 1.8% of the city's shelters. Right now, the five most shelter-concentrated communities are each housing over double or triple that average. The evidence shows that most communities are not bearing their fair share.

The factors contributing to this trend mirror those that lead to the broader trend in all LULUs.⁴¹ Notably, the fact that most shelters undergo an expedited emergency siting process also means that the affected community has less opportunity to participate in the official government siting process, though nonprofit organizations and elected officials carry out varying levels of community outreach around new shelters outside the official processes.⁴²

LEGAL ANALYSIS: COURTS HAVE LIMITED POWER TO UPHOLD FAIR SHARE REQUIREMENTS

When community organizations and neighborhood residents' coalitions file suit to prevent the siting of homeless shelters in their communities, they tend to assert two basic legal claims under the FSC: they argue that the city has failed to follow the procedures required by the FSC, or they argue that their neighborhood is already oversaturated with shelters or other similar facilities. Most typically, they advance both arguments.⁴³ Courts have sometimes upheld the procedural requirements of Fair Share. In *Silver v. Dinkins*, a decision from 1993, the court held that the city was required to make a meaningful analysis of alternative sites, which meant that their reasoning for rejecting other sites had to rely on more than just cost-effectiveness.⁴⁴ In *Ocean Hill Residents Ass'n*, the court held that DHS could not skirt the responsibility of considering alternative

41. See *supra* Section I.A; see, e.g., N.Y.C. COUNCIL, *supra* note 2, at 5; Richard J. Rogers, *New York City's Fair Share Criteria and the Courts: An Attempt to Equitably Redistribute the Benefits and Burdens Associated with Municipal Facilities*, 12 NYLS J. HUM. RTS. 193, 196, 201 (1994); Video Interview with Muzzy Rosenblatt, *supra* note 1; Video Interview with Michael Freedman-Schnapp, *supra* note 1; Video Interview with Ken Knuckles, *supra* note 27.

42. Video Interview with Muzzy Rosenblatt, *supra* note 1; Video Interview with Arvind Sindhvani, Director of Land Use & Community Advocate, Office of Council Member Lincoln Restler (Nov. 11, 2022); Video Interview with John Douglas & Erin Buchanan, *supra* note 17.

43. See e.g. *Rebirth of Bergen St. Block Ass'n v. City of New York*, 55 N.Y.S.3d 694 (Sup. Ct. 2017).

44. *Silver v. Dinkins*, 601 N.Y.S.2d 366, 370 (Sup. Ct.), *aff'd*, 602 N.Y.S.2d 540 (App. Div. 1993).

sites even if the agency received a site-specific proposal from an organization through its open-ended RFP.⁴⁵

Despite these examples, the majority of cases show courts deferring to agency action. As long as DHS or the city shows general compliance with the FSC procedures (e.g., the city considered alternative sites and the city did not “flagrantly” ignore the FSC), the court will uphold DHS’s siting plan.⁴⁶

In *Gjonaj v. City of New York*, the court held that the FSC are only guidelines and do not dictate mandatory procedures.⁴⁷ The case involved the residential beds-to-population ratio that DCP is directed to issue annually under the FSC, but that the agency has failed to issue since 2003.⁴⁸ The FSC requires agencies to apply a stricter standard for sitings of certain residential facilities, including homeless shelters and detention facilities, when the city plans to site a facility in a community with a high bed-to-population ratio. The stricter standard requires the agency to explain “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.”⁴⁹ But because DCP has failed to publish these statistics, agencies are not required to follow these stricter standards. The court in *Gjonaj* found that “since the rule provides for no consequences if an annual index is not issued, it creates a discretionary rather than a mandatory act compliance.”⁵⁰ In other words, this part of the FSC has been effectively gutted.

CASE STUDY: CROWN HEIGHTS HOMELESS SHELTERS

In 2017, residents of Crown Heights protested the placement of two new homeless shelters in their neighborhood—one north of Eastern Parkway and one south. Both were part of then Mayor de Blasio’s plan to “turn the tide” on homelessness in NYC through his comprehensive homeless shelter plan.⁵¹ Though the Mayor’s plan

45. Ocean Hill Residents Ass’n, 943 N.Y.S.2d 793, tbl. 9 (Sup. Ct. 2011).

46. Cmty. Plan. Bldg. No. 4 v. Homes For the Homeless, 600 N.Y.S.2d 619, 623 (Sup. Ct. 1993).

47. *Gjonaj v. City of New York*, 111 N.Y.S.3d 805, tbl. 1 (Sup. Ct. 2018).

48. *Id.* at 5.

49. N.Y.C. COUNCIL, *supra* note 2, at 9.

50. *Gjonaj*, 111 N.Y.S.3d at 805.

51. BILL DE BLASIO, TURNING THE TIDE ON HOMELESSNESS IN NEW YORK CITY (2017), <https://www.nyc.gov/assets/dhs/downloads/pdf/turning-the-tide-on-homelessness.pdf>; Dana Schulz, *Crown Heights’ Controversial Homeless Shelter Development Opens Lotto for 33 Low-Income Units*, 6SQFT (Sept. 7, 2017), <https://>

involved opening ninety new shelters around the city, the first five announced included two shelters in Crown Heights, a neighborhood with nineteen shelters already open at the time.⁵²

Both shelters—the Bergen House Shelter and Rachel’s House Family Residence—were introduced to the community at the end of February 2017 and slated to open in March 2017.⁵³ City representatives held community meetings where many local residents voiced their opposition.⁵⁴ Following these contentious community meetings, some community members filed lawsuits to enjoin the City from further progressing towards opening the shelters.⁵⁵

Regarding the Bergen House Shelter, petitioners alleged several claims, including that their neighborhood was already overburdened and oversaturated with shelters and that DHS failed to conduct a Fair Share Review as required by City Charter Section 203.⁵⁶ In March 2017, the Kings County Supreme Court issued a temporary restraining order (TRO), preventing the shelter from opening. Right before oral arguments for the preliminary injunction hearing, the city submitted a “voluminous” answer containing their Fair Share Analysis of the shelter. Following oral argument, the court issued a preliminary injunction sustaining the pause on opening,⁵⁷ but, on May 22, 2017, the court dismissed the suit and the shelter did open. In December 2021, the shelter closed, and its residents relocated due

www.6sqft.com/crown-heights-controversial-homeless-shelter-development-opens-lotto-for-33-low-income-units/.

52. Nikita Stewart, *Fury over Brooklyn Shelter Reflects Difficulty of Curbing Homelessness*, N.Y. TIMES (Mar. 8, 2017), <https://www.nytimes.com/2017/03/08/nyregion/crown-heights-ny-homeless-shelter.html>; Schulz, *supra* note 51.

53. Rachel Holliday Smith, *Homeless Shelter for 132 Families Coming to New Crown Heights Complex*, DNAINFO (Mar. 29, 2017, 2:01pm), <https://www.dnainfo.com/new-york/2017/03/29/crown-heights/new-crown-heights-homeless-shelter-families-267-rogers-fair-share>; Marc Torrence, *Crown Heights Neighbors ‘Betrayed’ by Electeds Who Didn’t Tell Them About Homeless Shelter*, PATCH (Apr. 5, 2017, 5:11PM), <https://patch.com/new-york/prospectheights/crown-heights-electeds-dropped-ball-not-telling-neighbors-homeless-shelter>.

54. Rachel Holiday Smith, *Homeless Shelter Opening Delayed Again by Judge as Neighbors Fight City*, DNAINFO (April 28, 2017 5:20pm, Updated on May 1, 2017 7:51am), <https://www.dnainfo.com/new-york/2017/04/28/crown-heights/bergen-street-homeless-shelter-lawsuit-brooklyn-judge-ruling>; William Engel, *Crown Heights Residents Turn Thumbs Down On Rogers Avenue Homeless Shelter*, POLITICSNY (Apr. 7, 2017), <https://politicsny.com/2017/04/07/crown-heights-residents-turn-thumbs-rogers-avenue-homeless-shelter>.

55. *Rebirth of Bergen St. Block Ass’n v. City of New York*, 55 N.Y.S.3d 694, 694 (Sup. Ct. 2017). *Crown Street Block Association et. al. v. The City of New York, et. al.*, Index No. 1624/2017 (Sup. Ct. Kings Cty, June 2, 2017) (on file with authors);

56. *Id.* at 1.

57. *Id.*

to the non-profit operator's chief executive officer being investigated for fraud.⁵⁸

Rachel's House Family Residence opened on May 15, 2017, while the case of the Bergen House Shelter was still pending, but after just one day in operation (and ten families moving in), the same court issued another TRO preventing any more families from moving in.⁵⁹ This suit also eventually was dismissed, and Rachel's House reopened and is still in operation.⁶⁰

COMPETING PERSPECTIVES

Perspective of Residents. According to the claims alleged in the lawsuit and our conversation with Jacqueline McMickens, the attorney who represented the community members in their lawsuit, residents were immediately wary and resistant towards these shelters.⁶¹ To many residents, the city's siting process reinforced their underlying distrust of city government: it seemed that DHS and the nonprofits were swooping in with little regard for the wellbeing of this predominantly Black and Brown neighborhood, as well as little regard for the existing residents' input.⁶² This distrust was heightened because of past experiences with poorly run and poorly resourced shelters in this area, which have led to a hesitancy about new shelters for many Crown Heights residents.

In this instance, these residents appeared to be opposing new shelters based on a genuinely felt impression that past shelters had led to concrete harms in their community.⁶³

58. Chris Sommerfeldt, *NYC Homeless Shelter Provider Keeps Getting City Funding Despite Facing Criminal Probe*, DAILY NEWS (Mar. 27, 2022, 10:10PM), <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-nyc-homeless-shelter-core-services-criminal-investigation-20220328-ki4jsb3jmjbhdprfbhenh7gedm-story.html>; Michelle George, *Closing of Bergen House Shelter*, BROOKLYN CMTY. BD. 8 (Dec. 6, 2021), <https://www.brooklyncb8.org/news-listing/closing-of-bergen-house-shelter>.

59. Marc Torrence, *Judge Dismisses Lawsuit Against One Brooklyn Homeless Shelter*, PATCH (May 22, 2017, 2:06PM), <https://patch.com/new-york/prospectheights/families-banned-moving-new-brooklyn-homeless-shelter-until-least-june>.

60. Unhoused New Yorkers, Samaritan Daytop Village (2024), <http://www.samaritanvillage.org/people-we-serve/homeless-new-yorkers> ("We operate residences for families without homes at our . . . Rachel's House facilities.").

61. Telephone Interview with Jacqueline McMickens, *supra* note 31; Torrence, *supra* note 53.

62. Telephone Interview with Jacqueline McMickens, *supra* note 31.

63. *Id.*

It is critical to understand the community's underlying concerns in all cases of pushback against siting shelters.⁶⁴

Perspective of Elected Representatives. Elected representatives had more varied perspectives on the new shelters. CB leaders, appointed by the BP in consultation with City Council members of overlapping districts, have the smallest constituency. Their perspective in this case typically aligned with the residents: opposition to the shelters and frustration with the short notice given before they were sited.⁶⁵

Around the same time these shelters were proposed, City Council was advocating for strengthened FSC that would have allowed greater community input for a wide range of LULUs, including shelters (though not necessarily referring to the shelters proposed in De Blasio's Comprehensive "Turning the Tide" Plan).⁶⁶ A City Council report states that, since 2010, DHS can initially circumvent FSC by utilizing emergency processes to site an emergency shelter and then submit a Fair Share Statement when the shelter contract becomes permanent.⁶⁷ Arguably, this option takes the power out of the FSC. However, the Director and Deputy Director of Land Use for the Brooklyn Borough President's Office argued that the expedited process and limited, purely advisory community input could be positive because of the great need to site shelters quickly.⁶⁸

Perspective of City Agencies. The city and DHS face a unique dilemma: because they must care for the wellbeing of all individuals in NYC—both the unhoused and housed—their responsibilities are twofold. They must provide shelter for an overwhelmingly large population of homeless individuals and families as quickly as possible, and they must do so responsibly, fairly, and democratically (which often means with a certain slowness). Sometimes these responsibilities contradict one another, and one gives way to the other. Regarding the two Crown Heights shelters in particular, DHS acknowledged that, "in the short term, shelters may be placed in

64. Video Interview with Muzzy Rosenblatt, *supra* note 1; Video Interview with John Douglas & Erin Buchanan, *supra* note 17.

65. Torrence, *Crown Heights Neighbors 'Betrayed' by Electeds Who Didn't Tell Them About Homeless Shelter*, *supra* note 53.

66. N.Y.C. COUNCIL, *supra* note 2, at 2, 5.

67. *Id.* at 13.

68. Video Interview with John Douglas & Erin Buchanan, *supra* note 17.

communities that already have a significant number of shelters.”⁶⁹ The priority for DHS here was to site facilities to address the overwhelming need for housing. Furthermore, the city also has a fiduciary duty to its taxpayers to site with relative cost-efficiency, and land owners in rich neighborhoods often do not want to lease their land to developers and operators of homeless shelters, particularly not at prices affordable to the city or nonprofits.⁷⁰ Agencies also must consider client needs, which could mean providing more beds in those few CBs where more homeless families want to keep their children in the same school or neighborhood.⁷¹

Perspective of Nonprofit Organizations. Since the mission of a non-profit organization is to best serve as many clients and potential clients as possible, the primary concern is typically operational efficiency and feasibility.⁷² For the Bowery Residents’ Committee, an organization that operates several shelters in NYC, this means siting shelters in locations accessible by public transit, in buildings with elevators, on land that has as-of-right zoning for a shelter, and at a space that they can afford.⁷³

In sum, what makes siting homeless shelters complicated is the competing perspectives of the many stakeholders, which necessitates compromise. Fair Share seeks to strengthen the balance of that compromise, but people of good faith continue to disagree on what exactly the balance should look like.

B. Detention Facilities

THE PROCESS OF SITING OF DETENTION FACILITIES AND THEIR CURRENT DISTRIBUTION

City detention facilities are sited through ULURP and subject to the FSC.⁷⁴ Excluding facilities on Rikers Island, there were thirteen

69. Raphael Pope-Sussman, ‘We’re Going To Shut It Down’: Crown Heights Blasts City Plan For Men’s Shelter, *GOETHAMIST* (Mar. 5, 2017), <https://gothamist.com/news/were-going-to-shut-it-down-crown-heights-blasts-city-plan-for-mens-shelter>.

70. Video Interview with Ken Knuckles, *supra* note 27.

71. Video Interview with Vicki Been, Professor of Law, New York University School of Law (Nov. 4, 2022).

72. Video Interview with Muzzy Rosenblatt, *supra* note 1 (“Shelters are places for people to heal and heal well.”).

73. *Id.*

74. See FSC, *supra* note 8, attach. C (listing detention facilities as subject to the FSC). Because detention facilities are classified by the FSC as “residential facilities,” the siting agency, in theory, is obligated to perform a more in-depth Fair Share Review than for other kinds of facilities; but, in practice, this higher standard of

physically distinct detention facilities within NYC as of June 2022,⁷⁵ including city, state, and federal facilities.⁷⁶

These thirteen facilities are spread across twelve CDs. While a handful of these CDs are significantly whiter and have significantly lower poverty rates than the city as a whole, a majority of these CDs have above-average poverty rates and above-average populations of people of color.⁷⁷

CASE STUDY: BOROUGH-BASED JAILS

In 2018, Mayor de Blasio announced a “borough-based jail system” meant to replace the detention facilities on Rikers Island. New detention facilities were announced in Mott Haven, Bronx; Boerum Hill, Brooklyn; Civic Center, Manhattan; and Kew Gardens, Queens.⁷⁸

In Manhattan, the new borough-based jail was originally proposed for 80 Centre Street, which currently houses city government offices. After considerable pushback—from community groups,⁷⁹ Community Board One (CB1),⁸⁰ the Manhattan borough president, and the local City Councilor—the city halted its plans⁸¹ and instead

review is neither implemented, nor enforced by the courts. See discussion on this standard *supra* Section II.A. Legal Analysis. Courts have limited power to uphold Fair Share requirements. *Id.* at 11–12.

75. See App. B, tbl. 3. We use the term “detention facilities” broadly to refer to all jails, correctional facilities, and similar facilities. The differences between these facilities are beyond the scope of this paper; all are LULUs. These thirteen facilities do not include the four proposed borough-based jails currently under construction. Note also that three of these thirteen facilities are currently closed and will be replaced by three of the four borough-based jails.

76. *Id.* Federal and state facilities are neither subject to ULURP nor the Fair Share Criteria, but city agencies are directed to consider the presence of federal and state facilities when siting city facilities. See FSC, *supra* note 12, § 6.53.

77. See App. B, tbl. 3. Of the thirteen facilities, seven are in CDs with both poverty rates and percentage population of people of color higher than the city average.

78. City of New York, *De Blasio Administration Unveils Plans for Borough-Based Jails to Replace Facilities on Rikers Island*, N.Y.C. (Aug. 15, 2018), <https://www.nyc.gov/office-of-the-mayor/news/413-18/de-blasio-administration-plans-borough-based-jails-replace-facilities-rikers>.

79. Carl Glassman, *In Face of Furious Opposition, City Backs Down on 80 Centre St. Jail*, TRIBECA TRIB. (Nov. 28, 2018), <http://www.tribecatrib.com/content/face-furious-opposition-city-backs-down-80-centre-st-jail>; Video Interview with Victoria Lee, Cofounder, Welcome to Chinatown (Nov. 18, 2022).

80. Community Board One, *Resolution re Manhattan Detention Complex* (Sept. 25, 2018), <https://static1.squarespace.com/static/5df7b9e3264d2f2dac3c6394/t/5dfbbae3cbff7f222da9cf6f/1576778467307/20180925-CB1-Resolution.pdf>.

81. Amy Plitt, *City Scraps Plan for Rikers-Replacing 40-Story Manhattan Jail*, CURBED N.Y. (Nov. 28, 2018), <https://ny.curbed.com/2018/11/28/18116709/rikers-island-closure-manhattan-jail-the-tombs> (quoting both the City Councilor and Borough President who indicated they disapproved of the 80 Centre Street plan).

decided that the new jail would replace the pre-existing Manhattan Detention Complex at 125 White Street, which is also within CB1. The city claimed that the change was not made because of political pressures but simply because of the difficulties involved in moving the current tenants at 80 Centre Street.⁸² Because of this change, three of the four borough-based jails are now slated to replace pre-existing detention facilities; the fourth, in the Bronx, is planned to be built on the site of a tow pound.

“I think the city is lucky to have . . . four sites . . . that had city uses,” said Kenneth Knuckles, Vice Chair of the CPC. Knuckles argued that if the city could not build the jails on sites already occupied by undesirable city uses, “you could never close Rikers. . . . I dare say it would never get through ULURP because nobody wants [the jails].”

All four proposed jail sites were combined into a single ULURP site selection application, filed in March 2019.⁸³ As part of ULURP, the CBs and BPs with jurisdiction over each proposed site submitted recommendations of approval or disapproval of the ULURP application to the CPC. All four CBs recommended disapproval; out of the BPs, three recommended disapproval, and only the Manhattan BP recommended approval.⁸⁴

However, recommendations on ULURP applications by CBs and BPs are simply advisory. Ultimately, the borough-based jail ULURP application needed simply to be approved by the CPC and the City Council. Because the four proposed jails had been combined into a single application, the CPC and Council voted on the project as a whole, not on each jail individually.⁸⁵ Several commentators argued that the decision to combine the jails into a single approval process was made at least in part to diffuse opposition from any one borough and to give political cover to local city councilors. When locals protested, the city—or an individual councilor in a district slated to receive a new jail—could point to the three *other* jails to argue that no specific community was being singled out. “Unless

82. *Id.* Community organizers generally opposed the original location but were also perplexed by the sudden change. Video Interview with Victoria Lee, *supra* note 79 (“The city just changed all of a sudden after they had gone through introducing the other location.”).

83. CITY PLAN. COMM’N, C 190333 PSY (2019), <https://a860-gpp.nyc.gov/downloads/9k41zg097?locale=en>.

84. *Id.* at 131-274.

85. Technically, several other land use actions, in addition to the main site-selection application, required independent approval to facilitate the construction of the borough-based jails; however, as a practical matter, the CPC and City Council treated all these land use actions as a single issue.

every borough felt that every other borough was going to take a jail, nobody was going to take a jail,” said Professor Vicki Been.⁸⁶

The CPC approved the ULURP site selection application on September 3, 2019, with few changes,⁸⁷ but in October 2019 the City Council announced height reductions to all four proposed jails.⁸⁸ Once this change was incorporated, the Council then approved the borough-based jail site selections on October 17, 2019.⁸⁹ City Council leaders claimed the height reductions were initiated because the city’s estimates of the future detainee population had significantly decreased and less space would be needed to house detainees.⁹⁰ Yet one of the most consistent complaints among community groups, CBs, and BPs alike was the massive height of the proposed jails.⁹¹ Some city councilors for the districts slated to receive the new jails—who possibly had the power to torpedo the whole project through member deference⁹²—indicated that the height of the jails was one of their main concerns; indeed, one even implied that she was somehow responsible for the height reductions.⁹³

86. Video Interview with Vicki Been, *supra* note 71. A DCP representative similarly noted: “The four at once—there is something to be said for, we aren’t singling you out, we are trying to accomplish something on a city-wide basis, and we are asking each borough to take some responsibility; it seems fairer and is fairer So you’re asking people not to vote necessarily on what’s going on in their neighborhood but what the city’s trying to do on a city-wide basis.” Video Interview with Department of City Planning Representatives, *supra* note 1.

87. CITY PLAN. COMM’N, *supra* note 83 at 51, 79–81.

88. *City Council Announces Height Reductions to Borough-Based Jails*, POLITICS N.Y. (Oct. 15, 2019), <https://politicsny.com/2019/10/15/city-council-announces-height-reductions-to-borough-based-jails>.

89. N.Y.C. Council, Resolution 1122-2019 (2019), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4169522&GUID=BBE43B0A-E349-4EAB-8C51-D8A0A269B8D1&Options=&Search=>.

90. Carl Glassman, *On Eve of Vote on Jail Towers, City Council Announces Height Reductions*, TRIBECA TRIB. (Oct. 15, 2019), <http://tribecatrib.com/content/eve-vote-jail-towers-city-council-announces-height-reductions>.

91. *See* CITY PLAN. COMM’N, *supra* note 83 (CB and BP recommendations consistently criticize the height of the jails).

92. Member deference is an informal but long-standing tradition in which the city council defers to individual councilors on questions that uniquely impact that councilor’s district, including rezonings and LULU sitings.

93. Margaret Chin, the City Councilor for the distinct encompassing the proposed Manhattan jail at the time, said that “[f]rom the start, one of my top priorities was to achieve a serious reduction of the height of the Mayor’s proposed jail [This] goal was one that many community members shared I secured a significant height reduction” *City Council Announces Height Reductions to Borough-Based Jails*, *supra* note 88 (emphasis added).

POLITICAL OPPOSITION: MANHATTAN BOROUGH-BASED JAIL

The only CB outside of Riker's Island to contain more than a single detention facility is CB1, which covers Battery Park City, the Financial District, Seaport/Civic Center, and Tribeca. This is the same CB slated to receive the new borough-based jail for Manhattan.⁹⁴

On a cursory analysis, CB1 appears relatively wealthy and white, but CBs are imprecise tools. The two current detention facilities in CB1 border Chinatown, as will the new borough-based jail, which will replace the already standing Manhattan Detention Complex. If this new jail brings any negative externalities, they will likely be felt by the residents of Chinatown living just blocks away, not by the far-removed residents of the Financial District.⁹⁵ Defining the demographics and income levels of those directly surrounding the proposed site is difficult because the site borders multiple CDs, but these residents are much more likely to be people of color and to be below the poverty line than CB1 residents as a whole.⁹⁶

Indeed, much local opposition to the new jail has been rooted in Chinatown, and this opposition has been fierce and consistent.⁹⁷ Opposition comes from at least three areas: abolitionists who argue that *any* new jail will simply exacerbate the problems of mass incarceration;⁹⁸ local residents and community groups who are concerned about perceived externalities associated with the jail; and local residents and community groups who believe the city is dumping unwanted land uses on their community.⁹⁹

The abolitionist argument against *all* of the borough-based jails has been consistent and has been a key source of political pressure

94. As noted above, the Manhattan jail was originally proposed to stand at an independent site but is now planned to replace the current Manhattan Detention Complex, so CB1 will not experience a net increase in detention facilities but will maintain the distinction of being the only CB outside of Rikers with two such facilities.

95. CB1 acknowledged that the jail would impact Community Board Three (CB3), which includes Chinatown, and explicitly referenced the concerns of CB3. CITY PLAN. COMM'N, *supra* note 83, at 208.

96. The relevant demographics of those most likely to be affected by the jail are likely somewhere between the demographics of CB1 and of CB3 because the jail borders these two CBs. CB3 is majority people of color and has a poverty rate above the city average.

97. Some organizations with a strong presence in Chinatown which opposed the jail include Welcome to Chinatown, Neighbors United Below Canal, and Youth Against Displacement.

98. No New Jails N.Y.C., *PETITION: Close Rikers Without Building New Jails in NYC*, ACTION NETWORK, <https://actionnetwork.org/petitions/b34f77de17a8eb0320583feca17ef27a63fb5e5d>.

99. The latter two groups, of course, have significant overlap.

on the city. However, as these arguments are less about specific community concerns tied to LULUs and more about a general opposition to incarceration, this paper will not explore these arguments in depth.

Local pushback around perceived externalities has been similarly consistent. Community members have particularly expressed concerns about the height of the jail and anticipated construction-related disruptions. As noted earlier, the height concerns were echoed by the local city councilor, who claimed a political victory when City Council voted to decrease the heights of all the borough-based jails,¹⁰⁰ but many local residents argue that, even at the reduced height, the Manhattan jail will be out of scale with the neighborhood.¹⁰¹ There is also considerable concern that the demolition of the currently existing jail will have negative health impacts on residents, especially on seniors who live in a neighboring elderly-housing complex.¹⁰²

Fundamental concerns around *being heard* and *treated fairly* stand out as perhaps the most important source of pushback, and are the most relevant to the principles of Fair Share. Many local residents feel that the city much more readily invests in things the community *does not want* than in things the community actually needs. “What does this symbolize to people in the community about where the city and state chooses to invest its social services?” asked Victoria Lee from the community organization Welcome to Chinatown. The sense is that the city is willing to unfairly “dump” unwanted facilities on the neighborhood and that the city is unwilling to take seriously the community’s concerns about these facilities.

Detention facilities have existed in and around Chinatown for generations, and some residents have conflated these jails with the presence of homeless shelters and drug treatment centers in the area. To some, all of these facilities reflect the city’s fundamental lack of

100. “We got what we fought for,” said Councilor Chin, in reference to the height reductions. Glassman, *supra* note 90.

101. Activists call the jail a “mega jail” and argue that, even at its reduced height, it will be the tallest jail in the world. *Stop the Mega Jail: Chinatown Needs Your Help*, WELCOME TO CHINATOWN, <https://welcometochinatown.com/news/stop-the-jail> (last visited Sept. 6, 2023).

102. Video Interview with Victoria Lee, *supra* note 79 (emphasizing the possible negative health impacts on the residents of the nearby senior housing); see Testimony from Simona C. Kwon, DrPH, MPH, Dir., Ctr. for the Study of Asian Am. Health, Assoc. Professor, Dep’t of Population Health, NYU Sch. of Med., to Gale Brewer, Manhattan Borough President (June 27, 2019), <https://static1.squarespace.com/static/5df7b9e3264d2f2dac3c6394/t/5dfbbc73f74ce17bca9727fd/1576778867842/NYU-CSAAH-Testimony-62719-6.pdf>.

respect for the neighborhood.¹⁰³ CB1 explicitly referenced an over-concentration of detention facilities in the neighborhood as a reason for their opposition to the jail, noting that CB1 has the second highest bed-to-population ratio for detention facilities in the city.¹⁰⁴ At the same time, many residents believe the city does not meaningfully invest in their community; the area surrounding the jail lacks greenspace in particular.¹⁰⁵ The proposed height of the jail only reinforces this sense of the city's disdain. Both the scale and cost of the project seem to reflect the city's priorities—priorities which are fundamentally out of line with those of many community members.

POLITICAL SUPPORT: MANHATTAN BOROUGH-BASED JAIL

Supporters of the Manhattan borough-based jail do not justify the project by citing benefits that the jail will bring to the neighborhood. Instead, prisoners' advocates and the city government emphasize the need for more humane prisons to replace Rikers and argue that the site chosen for the new jail is rational because of its proximity to the courts and because its central location will facilitate family visits.¹⁰⁶ Advocates emphasize that, so long as prisons still exist, more modern facilities are desperately needed to improve conditions for the incarcerated.¹⁰⁷ The city has also tied a package of local investments to the jail; these include upgrades to nearby Columbus Park and neighboring senior housing.¹⁰⁸

103. *CeFaan Kim, 'Enough Is Enough': Chinatown Residents Rally to Protest Proposed Homeless Shelters, Jail*, abc7NY (May 2, 2022), <https://abc7ny.com/china-town-jail-homeless-shelter-proposed/11811939/> ("We have our fair [share] of shelters, we have more than our fair share of drug clinics and we're gonna have a mega prison in the middle of Chinatown," said one community member.).

104. CITY PLAN. COMM'N, *supra* note 83, at 193.

105. Video Interview with Victoria Lee, *supra* note 79 ("Chinatown and the LES are drastically under the median greenspace and active recreation greenspace . . . and the jail is being located next to the most-used green space in the neighborhood, Columbus Park."). For more data on the lack of greenspace in and around Chinatown, see Gotham Park, *Park Equity*, <https://gothampark.org/park-equity-1>.

106. See Anna Pastorella, *Opinion: It's Not a 'Megajail'—But It's Sorely Needed*, VILLAGE SUN (Mar. 8, 2022), <https://thevillagesun.com/opinion-its-not-a-megajail-but-its-sorely-needed>; see also N.Y.C. DEP'T OF DESIGN & CONSTRUCTION, DESIGN PRINCIPLES & GUIDELINES: NYC BOROUGH-BASED JAILS PROGRAM, MANHATTAN FACILITY (2022), <https://rikers.cityofnewyork.us/wp-content/uploads/BBJ-MN-FAC-Design-Guidelines-Public-Version-211221.pdf>.

107. Video Interview with Arvind Sindhvani, *supra* note 42.

108. N.Y.C. DEP'T OF DESIGN & CONSTRUCTION, BOROUGH-BASED JAILS NEIGHBORHOOD ADVISORY COMMITTEE MEETING DISMANTLE & POA UPDATES 24, 25 (2022), <https://rikers.cityofnewyork.us/wp-content/uploads/BBJ-MN-ALL-NACPresentationRevised-220727.pdf>. While the city has not explicitly framed these investments as such, some community activists see these investments as a kind of bribe to lessen opposition to the jail.

THE IMPACT OF FAIR SHARE

Several current or former government officials argued that the city's sense of fair distribution influenced the siting of the borough-based jails. Principles of fairness—or at least, what the city expected that city residents would consider “fair”—specifically motivated the decision to place one jail in each borough.¹⁰⁹

The procedural and transparency requirements imposed by the FSC, in addition to key requirements imposed by ULURP, also had an impact on the siting process. The CB recommendations, the BP recommendations, the CPC vote, and the City Council vote all became sites of political conflict. The visibility of the whole process gave local residents time to organize their response to the city's plans. Though fierce local opposition did not stop the siting of the jails, local community activists arguably *did* score a political victory by decreasing the heights of all four jails.¹¹⁰ While it is unclear what, exactly, led the City Council to make this decision, the strength of local opposition most likely had an impact—and that political opposition was able to coalesce in no small part by organizing to oppose the sitings at each procedural stage during the approval process.

It is far from clear that the *substance* of the FSC had any real impact on the city's decision process. The FSC explicitly references residential bed-to-population ratio¹¹¹ as a key consideration in the siting of residential facilities, and yet the city still decided to site a new jail in the CB with the second highest bed-to-population ratio for detention facilities in the city. Other than CB1, no one in the city government seemed bothered by the concentration of beds.

Even if some vague sense of fairness motivated the city in its siting decisions, and even if procedural and transparency requirements made it somewhat easier for local residents to organize partially successful political resistance to the project, a stark reality remains: many local residents simply do not feel that their concerns were heard, do not feel that the city has seriously considered their community's needs, and do not feel, fundamentally, that the siting

109. See sources cited *supra* note 86.

110. It should be noted that many activists, not wanting the jails at all, would not call this a victory.

111. Bed-to-population ratio means the ratio of overall population in the community district as compared to the number of “residential” beds in the district. Residential beds refer broadly to the capacity of correctional facilities, nursing homes, homeless shelters, and transitional housing, among some other similar categories. See N.Y.C. COUNCIL, *supra* note 2, at 12.

process has been legitimate. “The city is not seriously taking feedback from the community,” said Lee. “There’s no transparency. It seems like we’re doing our part in community engagement, in fair share—they’re just hitting the checkboxes.”¹¹² Perhaps the biggest question for the city, then—a question we will attempt to address in our recommendations—is if changes to the siting process could help to ensure that stakeholders in local communities feel truly included and heard as part of siting decisions.

C. *Waste Transfer Stations*

HOW PUBLIC WASTE TRANSFER STATIONS ARE SITED IN NYC

Waste Transfer Stations (WTSs) play an integral role in NYC’s waste management process, which manages almost fourteen million tons of waste annually.¹¹³ Trucks transport the city’s waste to WTSs where workers load the waste onto larger vehicles, including long-haul trucks, trains, and barges for export.¹¹⁴ The New York State (NYS) Department of Environmental Conservation (DEC) enforces standards for WTS operation.

The NYC Department of Sanitation (DSNY) contracts with private services to construct putrescible and non-putrescible solid waste transfer stations and then registers each new, modified, or renewed transfer station.¹¹⁵ In general, registered transfer stations must adhere to Title 6 NYCRR 362-3.3 regulations that specify maximum waste limits, waste removal schedules, and waste acceptance standards for city-owned, operated, or contracted transfer stations.¹¹⁶ Each WTS also must submit an annual report specifying the amount of waste received, service area, and the final destination of the waste. A WTS sited on city-owned or leased land requires a ULURP application, along with a Fair Share analysis. In contrast, private operators may site private WTSs in light manufacturing M1

112. Video Interview with Victoria Lee, *supra* note 79.

113. Greg Lettieri, *NYC Waste Statistics—What You Need to Know*, Recycle Track Systems (Aug. 23, 2022), <https://www.rts.com/blog/nyc-waste-statistics-what-you-need-to-know>.

114. Rick LeBlanc, *What Is a Waste Transfer Station?*, LIVEABOUT (Dec. 18, 2020), <https://www.liveabout.com/what-is-a-waste-transfer-station-2877735>.

115. *Transfer Facilities*, DEP’T OF ENV’T CONSERVATION, <https://www.dec.ny.gov/chemical/23678.html> (last visited Sept. 6, 2023).

116. N.Y. COMP. CODES R. & REGS. tit. 6, § 362-3.3.

zoning districts as of right.¹¹⁷ Consequently, private WTSs do not require FSC compliance.

Logistical considerations heavily influence where DSNY and private entities site WTSs. Key considerations include the WTS's proximity to collection routes; its proximity to major highways, rail, and barges; and whether adequate space exists for waste collection trucks and truck trailers to queue and park.¹¹⁸ Zoning ordinances restrict private WTSs from being located outside of M1 zones, leading to the concentration of WTSs within zones where communities tend to be low income and majority people of color.¹¹⁹ Siting WTSs in M1 zones ultimately presents a path of least resistance. The nature of these private WTSs and zoning ordinances has limited the fair distribution of private WTSs, perpetuating an overconcentration in a few overburdened communities.

CURRENT DISTRIBUTION OF WASTE TRANSFER STATIONS

Community opposition to the Fresh Kills landfill in Staten Island—once the world's largest landfill—motivated its closure in 2001. In the early 1990s, the Staten Island landfill had operated as the only landfill receiving residential waste from other boroughs.¹²⁰ In 1996, both Mayor Rudolph Giuliani and Governor George Pataki advocated closing the landfill. In response, the city sought to accomplish two goals: short term waste diversion from Fresh Kills and a long-term solution to the city's waste management.¹²¹ Short-term waste diversion consisted of costly three-year interim export contracts with private waste haulers, while the long-term solution involved six twenty-year contracts.¹²² These contracts specified no cap on permitted waste capacity at WTSs. Additionally, the WTSs sited under these contracts did not undergo ULURP and were not subject to the FSC because they were not sited on city land or by a city agency. This produced a concentration of private WTSs in predominantly

117. E-mail from Representative at Env't Compliance and Contracts, N.Y.C. Dep't of Sanitation (Oct. 20, 2022).

118. *Transfer Station Siting Criteria*, WASTE ADVANTAGE MAG. (Aug. 15, 2014), <https://wasteadvantagemag.com/transfer-station-siting-criteria>.

119. *Id.*

120. *Freshkills Park*, N.Y.C. PARKS, <https://www.nycgovparks.org/park-features/freshkills-park/about-the-site#:~:text=By%201991%2C%20Fresh%20Kills%20was,waste%20by%20December%2031%2C%202001> (last visited on Nov. 21, 2022).

121. STEVEN COHEN, *THE SUSTAINABLE CITY*, ch. 7 (2d ed. 2021).

122. *Id.*

M1 zones, impacting neighborhoods that had higher shares of poor and minority residents.¹²³

In this context of overconcentration, fair distribution became a key issue. This scenario is not only related to fair distribution geographically but also to fair distribution on the basis of waste capacity. Consequences of lackluster fair distribution and capacity guidelines after the closure of Fresh Kills still reverberate today. Most recently in 2018 City Council adopted the Waste Equity Law to address this waste capacity issue in overburdened communities, including North Brooklyn, South Bronx, and Southeast Queens.¹²⁴ A press release following its passage dubbed the local law “the final chapter of the City’s Solid Waste Management Plan.”¹²⁵

Due to the shortcomings of the city’s initial long term plan for waste management following the closure of Fresh Kills, former Mayor Bloomberg tasked DSNY to develop a comprehensive plan that would guide the city’s waste management process from 2006 to 2026.¹²⁶ DSNY’s 2006 Comprehensive Solid Waste Management Plan (SWMP) sought to (1) continue exporting city waste; (2) enter into four long-term (twenty-year) export contracts with private companies; (3) develop four City-Owned Converted Marine Transfer Stations (MTS) on former waste transfer sites;¹²⁷ (4) decrease the city’s reliance on trucks for transferring waste for environmental and cost concerns; and (5) promote equity to “the greatest extent

123. Transcript of the Minutes of the Committee on Sanitation and Solid Waste Management, Committee on Sanitation and Solid Waste Mgmt., City Council City of New York (June 19, 2018), https://d12v9rtnomnebu.cloudfront.net/diveimages/Hearing_Transcript_61918_1.pdf#page=29.

124. See App. C: Ttbl. 7 Intro-157-C: Overburdened Communities.

125. Press Release, Bill de Blasio, Mayor, City of New York, Corey Johnson, City Council Speaker, Mayor de Blasio and Speaker Johnson Celebrate Signing of Waste Equity Legislation (Aug. 16, 2018), <https://www.nyc.gov/office-of-the-mayor/news/417-18/mayor-de-blasio-speaker-johnson-celebrate-signing-waste-equity-legislation>.

126. E-mail from representative at Env’t Compliance and Contracts, *supra* note 117.

127. “DSNY operates six transfer stations. The four Marine Transfer Stations (MTSs) for DSNY-managed putrescible waste are the E. 91st Street, Hamilton Avenue, North Shore and Southwest Brooklyn MTSs. One MTS—West 59th Street MTS in Manhattan—transfers Manhattan recyclable paper to Visy Paper on Staten Island. The sixth facility is the Staten Island Transfer Station which accepts Staten Island DSNY-managed putrescible waste. Every other transfer station in the City is private.” E-mail from representative at Env’t Compliance and Contracts, *supra* note 117.

possible.”^{128, 129} The City Council approved the four designated MTSs¹³⁰ through ULURP in 2005 while DEC authorized the SWMP in 2006.¹³¹ The SWMP, though not perfect and subject to delays, has produced innovative retrofit designs to quell common concerns with WTSs and has played a critical role in alleviating disproportionate burdens of WTSs.

LEGAL ANALYSIS

Though WTSs have a crucial role in the city’s waste management process, communities seldom want WTSs in their backyard due to concerns about their associated externalities, as evidenced in a lawsuit contesting the siting of the East 91st MTS (one of the key stations within DSNY’s SWMP).¹³² Among other claims that DSNY failed to follow proper procedures, petitioners in the case (local community members) argued that DSNY’s efforts did not comply with FSC because they failed to evaluate the “compatibility” of this facility with other facilities in the area, the potential adverse effects on “neighborhood character,” and the “suitability of the site to provide cost-effective delivery of the intended services.” The court, however, found that the petitioners could not allege their neighborhood was overburdened by referencing these three nebulous FSC requirements. The court held that DSNY did substantially comply with the FSC because the Fair Share Analysis that DSNY submitted with their ULURP application considered other sites (twenty others) and found strategic advantages as to the chosen location.

CASE STUDY: EAST 91ST STREET MARINE WASTE TRANSFER STATION (MWTs)

Perspectives of Residents. Playing a key role in the SWMP, the East 91st MTS officially opened in 2019. At a legislative public hearing for the siting of the East 91st MTS in 2007, several hundred community members and local officials attended in protest, claiming that DSNY’s Final Environmental Impact Statement (FEIS) failed to

128. COHEN, *supra* note 121.

129. N.Y.C. DEP’T OF SANITATION, SOLID WASTE MANAGEMENT PLAN (2006), <https://dsny.cityofnewyork.us/wp-content/uploads/reports/swmp-comprehensive-report-2006.pdf>.

130. These include the Hamilton Avenue MTS, Southwest Brooklyn MTS, East 91st Street MTS, and North Shore MTS.

131. See App. C: fig. 4, Ttbl. 8.

132. *In re Gracie Point Cmty. Council v. New York State Dep’t of Env’t Conservation*, 936 N.Y.S.2d 342 (App. Div. 2011).

take account of negative impacts from increased traffic, air pollution, noise, vermin, odors, and adverse effects on everyday activities within the community and that the city should have sought state legislative approval under the public trust doctrine.¹³³ While litigation brought by community members and local businesses failed to prevent the project, their claims illuminate their key concerns. In *Gracie Point Community Council v. NYS DEC*, petitioners asserted that the DEC's decision to issue the permits required to site the MTS equated to a "declaration of regulatory impotence when it comes to protecting public, health, safety, and welfare."¹³⁴ In *Powell v. City of New York*, petitioners expressed concern that project construction would alienate parkland use, specifically the Asphalt Green Sports Center and Bobby Wagner Walk, and argued that the NYS Legislature needed to authorize the project.¹³⁵

Perspective of City Agencies—DSNY. According to an Environmental Compliance and Contracts representative at DSNY, "[F]airness drives the siting in the SWMP."¹³⁶ Though *private* WTSs can escape the auspices of the FSC, DSNY-managed facilities under this plan cannot. The SWMP prioritizes "shifting the burden" of the interim contracts away from neighborhoods where operators historically sited private transfer stations as of right—the South Bronx, North Brooklyn, and Jamaica, Queens. With DSNY centering fairness, the East 91st MTS siting represents a success for the agency because it successfully sited the transfer station in a relatively high-income and predominantly white neighborhood of Manhattan, which has historically *not* hosted waste transfer stations. DSNY appears to see this as a positive movement towards Manhattan taking accountability to process, treat, and transfer the waste that it generates, instead of shipping waste to overburdened communities.

Perspective of Nonprofit Organizations. Environmental organizations, including the Natural Resources Defense Council (NRDC), Sustainable South Bronx (SSB), and Organization of Waterfront Neighborhoods (OWN), all promoted the East 91st MTS project because it would reduce the usage of trucks to transport waste to

133. See app. C.

134. *In re Gracie Point Community Council*, 936 N.Y.S.2d at 346.

135. *Powell v. City of New York*, 924 N.Y.S.2d 370 (App. Div. 2011).

136. E-mail from representative at Env't Compliance and Contracts, N.Y.C. Dep't of Sanitation (Oct. 20, 2022) (on file with authors).

its final disposal, thus mitigating air pollution.¹³⁷ These organizations also promoted the project from an environmental justice perspective, stating that the project would contribute to the wider effort of alleviating the concentration of WTSs in communities of color and ensuring that impacts are fairly shared. The Environmental Defense Fund (EDF) and CIVITAS (based in the Upper East Side and East Harlem) also both promoted the project with the caveat that adequate safety measures should be put in place to protect the surrounding community.¹³⁸

III. Recommendations

A. Summary

The *substantive* criteria of Fair Share, in and of themselves, do almost nothing to restrain the discretion of city agencies when siting facilities.¹³⁹ So long as a siting agency engages in *some* kind of Fair Share analysis, courts almost always grant deference to the agency's findings.¹⁴⁰ But the *procedural* requirements of Fair Share—procedures usually supplemented by the requirements of ULURP—arguably provide *political* safeguards against the clustering of LULUs. For some commentators, this is the main point of Fair Share: by increasing transparency throughout the siting process and by explicitly referencing, in the charter itself, a standard of fairness to which city agencies are *supposed* to adhere, the FSC give greater opportunities to local communities to identify and protest the overconcentration of LULUs in their neighborhoods. This means LULU siting decisions can be decided, more or less democratically, in the political process.

According to Professor Eric Lane, executive director and counsel to the 1989 Charter Commission,

137. Edward Buhrmaster, *N.Y.C. Dep't of Sanitation (East 91st Street Marine Transfer Station)—Ruling on Issues and Party Status*, DEP'T OF ENV'T CONSERVATION (Apr. 7, 2008), <https://www.dec.ny.gov/hearings/43172.html>.

138. *Id.*

139. Video Interview with Michael Freedman-Schnapp, *supra* note 1 (“The fair share system just is not working . . . [and it has] become an afterthought.”); Interview with Roderick Hill, *supra* note 1 (“Fair share right now just doesn't matter . . . It's too mushy.”); Video Interview with Vicki Been, *supra* note 71 (“The problem with these flexible criteria is that it can very easily be manipulated . . . The Fair Share Process . . . [has] failed miserably.”).

140. See discussion *supra* Section II.A. Legal Analysis: Courts have limited power to uphold Fair Share requirements.

We tried to create a dialogue where, if the community said something wasn't fair, the city would have to do something about it. So, we put the word 'fair' in the charter. We were trying to arm the community, to provide the community with Charter standards to meet the arguments of the city . . . I think the map [in the yearly statement of needs] is a great improvement when communities can pay attention to it and actually fight [against overconcentration of LULUs] as an issue. The city is more aware of this now, and when they make the map they should be trying to avoid dumping more.^{141, 142}

For other commentators, allowing local political pressures to determine the siting of LULUs creates a kind of prisoner's dilemma: if *every* community opposes the facility, but the facility is nonetheless necessary for the city as a whole, then the facility will never be built even though everyone would benefit from it. And it may sometimes be infeasible to site certain facilities "fairly" where "fairness" is defined as an even distribution of facilities throughout the city. Waste treatment facilities may need to be sited near pre-existing physical infrastructure; prisoners may benefit from close proximity to courthouses; and homeless shelters may be best placed nearby to supportive or charitable institutions.¹⁴³

But the reality remains that, even with the FSC, LULUs remain overconcentrated in low-income and minority communities. Whether or not these siting decisions are practical from the city's perspective, many communities find this concentration of LULUs to be deeply unfair and to reflect a fundamental lack of democratic legitimacy in city government.

141. Video Interview with Eric Lane, *supra* note 1. Michael Friedman-Schnapp made a similar point: "I would say that Fair Share, by making the decision-making process way more public than it used to be, does avoid the worst outcomes. I would say the mechanism is more political, fear of bad press." Video Interview with Michael Freedman-Schnapp, *supra* note 1.

142. It should be noted, finding data on the maps of city facilities, as expressed in the yearly Statement of Needs, is not hard. These maps can be found at the Department of City Planning Capital Planning Explorer website. *Capital Planning Explorer*, N.Y.C. PLAN., <https://capitalplanning.nyc.gov/map/facilities#10/40.7128/-74.0807> (last visited Sept. 6, 2023). The challenging part is connecting these maps/facilities to demographic data. These combined data are not readily available. The facility maps alone do not indicate to viewers, community groups, and organizations the full story when it comes to the placement of LULUs and their demographic contexts. Such a shortcoming creates data accessibility and transparency concerns for community groups and activists who may not have the time or capacity to create these maps.

143. Interview with Roderick Hills, *supra* note 1 ("There's generally a collective action problem with land use. Everyone agrees certain uses are regionally necessary, but because they're LULUs, everyone excludes them from their neighborhood . . . I see Fair Share as just being one more hoop to jump through to get stuff sited that is already impossible to site.").

At the core of these debates are two fundamental, and occasionally conflicting, interests: the interests of those who are served by a specific city facility and the interests of those who live near that facility. The question—the same question that faced the City Charter drafters in 1989—is how to balance these interests.

We argue that city facilities that promote public purposes need to be built, and clients need to be well-served by these facilities. At the same time, these facilities should not be overconcentrated, and local communities need to feel respected and listened to, not disregarded by an uncaring city bureaucracy. A successful system for siting city facilities should meet both goals; to many, the current system meets neither. Following are three suggested solutions that we believe will better balance these goals.

B. The Padavan Law as a Model for Siting Facilities

To craft suggestions on how to improve the siting of LULUs in NYC, it helps to look at successful attempts to regulate sitings of other politically contentious facilities. The Padavan Law governs the siting of residential facilities for individuals with disabilities and residential treatment facilities for youth in NYS.¹⁴⁴ Passed in 1978, a key goal of the law was to make it easier to site group homes for individuals with disabilities by bypassing local zoning regulations and local political opposition.¹⁴⁵ The law succeeded. In the decade after its passage, the number of beds in residential facilities for individuals with disabilities increased from 308 to 6,354.¹⁴⁶ As the law limits each individual facility to a maximum of fourteen residents, this indicates that over four hundred *facilities* were opened in ten years.

The Padavan Law takes siting decisions out of the hands of local authorities. Under the law, an individual or group—be it a government agency or a charitable organization—must notify the municipality’s executive of the group’s intention to site a residential facility within that municipality (within NYC, the relevant “municipality” is the community board with jurisdiction over the proposed site).¹⁴⁷

144. The “Padavan Law” is an informal name for N.Y. MENTAL HYG. LAW § 41.34 (McKinney 2023).

145. Michael Winerip, *Our Towns; Group Homes: A Law Works Ever So Quietly*, N.Y. TIMES (Nov. 4, 1988), <https://www.nytimes.com/1988/11/04/nyregion/our-towns-group-homes-a-law-works-ever-so-quietly.html>.

146. *Id.*

147. N.Y. MENTAL HYG. LAW § 41.34 (a)(2), (b), (c), (a)(3) (McKinney 2023).

If the municipality opposes the siting or if the municipality and the entity proposing the facility (the “sponsoring agency”) cannot agree on a specific site for the facility, either the sponsoring agency or the municipality can request an immediate hearing before the Commissioner of the NYS Office of Mental Health (OMH).¹⁴⁸ In reviewing the sponsoring agency’s proposed location, the law directs the Commissioner to consider the need for the facility and the concentration of similar facilities in the area, and to reject the facility if it is determined that “the nature and character of the area in which the facility is to be based would be substantially altered as a result of establishment of the facility.”¹⁴⁹ If the Commissioner approves the facility, the municipality’s only recourse is an Article 78 proceeding¹⁵⁰ challenging the department’s decision.

By effectively removing any local veto power and mandating an expedited decision process, the Padavan Law makes the siting of facilities much quicker and easier than ULURP processes for siting city facilities in NYC. This process solves one key issue—actually siting facilities.

One might assume that a siting process which overrides local decision-making would lead to less equitable outcomes. But, arguably, when *every* local community has political input in the siting of undesired facilities, low-income communities suffer; expecting opposition wherever they go, city agencies end up placing facilities in communities that are the least politically organized—and that have less money to hire lawyers and lobbyists to oppose the facilities. “I don’t think [the Fair Share Criteria are] an elixir because two things do remain true: poorer communities have cheaper property and don’t have millions of dollars to invest in lobbyists and lawyers,” said Professor Lane.¹⁵¹ As noted above, the Padavan Law also directs the OMH to reject sites that would lead to an overconcentration of facilities, though it is hard to say if these requirements meaningfully prevent overconcentration, as courts almost always bow to agency discretion.¹⁵²

A similar structure could be implemented to site certain kinds of NYC facilities. Homeless shelters, which are already sited under an

148. *Id.* at (c)(5).

149. *Id.*

150. N.Y. C.P.L.R.. 78 (McKINNEY 2023).

151. Video Interview with Eric Lane, *supra* note 1.

152. See *Jennings v. N.Y. State Office of Mental Health*, 90 N.Y.2d 227 (Ct. App. 1997) (explaining that the agency’s “determination is entitled to deference when it is not irrational or unreasonable. . .”).

emergency procedure that avoids many of the procedural requirements of ULURP and Fair Share, may benefit from such a structure. Shelters are desperately needed but are consistently opposed by local communities. This context weighs in favor of an expedited process that overrides local vetoes. However, we believe any such law should also be paired with stronger substantive requirements to prevent overconcentration, which would explicitly prevent the siting of new shelters in CBs that have exceeded a threshold of overconcentration.¹⁵³

A major drawback of this approach would be a lack of local input.¹⁵⁴ Even if the law could be structured substantively to prevent *severe* overconcentration as defined by an empirical metric—no simple task—it would be next to impossible, and likely undesirable, to ensure *completely* equal distribution of facilities. The result would be that *some* communities would have a disproportionate number of shelters, and if those communities have no meaningful say in where those shelters are sited, they may well feel that the entire process is illegitimate.¹⁵⁵

If the primary policy concern is to ensure effective services for the homeless population of NYC, then perhaps these local sentiments are unimportant. But even if the feelings of local communities can be overlooked as a normative matter, it is far from clear that they can be overlooked as a *political* matter. Given the intensity of political opposition to many LULUs, a system that grants the New York State government power to site LULUs over the heads of local communities would be politically contentious. Still, the core insight of the Padavan Law—that the power to override local vetoes can vastly accelerate the pace of siting for necessary facilities—remains relevant.

C. Comprehensive Citywide Plan

The De Blasio era's Turning the Tide on Homelessness and Borough-Based Jail System Plans and the Bloomberg era's *SWMP*

153. It would be difficult to determine an exact threshold, but one could be chosen that would at least mitigate against extreme overconcentration.

154. Procedural requirements could be inserted to solicit local input, but such procedures would mitigate against the purpose of such an approach—ensuring an expedited siting process and avoiding local vetoes.

155. Indeed, even a community without a disproportionate number of shelters may well feel a political process is illegitimate if it gives them no meaningful input into the decision to place a homeless shelter in their neighborhood.

provide examples of how the city could use a comprehensive city-wide plan (CCP) to promote equitable distribution of facilities. The DCP, along with relevant city agencies, should use the shortcomings of past plans to create an enhanced CCP for the equitable siting of LULUs. A CCP should define an overarching strategy for siting LULUs during a four-year period (one plan for each mayoral administration).

NECESSARY COMPONENTS OF CCP

An effective CCP will require four mandatory components. First, coordination among all agencies siting LULUs will be necessary to prevent different agencies from siting LULUs in close proximity.¹⁵⁶ Coordination also should ensure that agencies are given access to land most feasible for a specific facility.¹⁵⁷ Second, DCP, along with the relevant agencies, must ensure that the CCP centers equity.¹⁵⁸ Third, the DCP and relevant agencies should conduct a cost-benefits analysis for the CCP as a whole and establish a timeline for procurement and construction of the facilities in the plan. Fourth, the CCP must establish a robust method for overruling local opposition so that the CCP can actually be implemented. One method, used in the 2006 SWMP and in De Blasio's Borough-Based Jails plan, involves requiring one ULURP application for all facilities.¹⁵⁹ Given the frequency of litigation, strategies to mitigate lawsuits aiming to prevent the opening of a facility may also be key.¹⁶⁰

ADVANTAGES OF CCPS

CCPs offer three advantages. First, an effective CCP would facilitate siting LULUs in the face of local opposition, ensuring that the city sites these facilities equitably. Second, because facilities sited under a CCP would undergo the same hearings, a CCP would minimize

156. For example, avoiding the siting of a DHS homeless shelters nearby to a DOC-sited detention facility.

157. A waste transfer station, for instance, may need to be sited near the water to transfer waste onto barges.

158. The definition of equitable siting can be similar to the fairness narrative used in the SWMP—"fair" meaning an equal geographic distribution of LULUs, preventing any one community district or borough from becoming overly burdened.

159. Combining multiple projects into one ULURP application can help diffuse political opposition to any single project. Video Interview with John Mangin, *supra* note 1.

160. Professor Vicki Been suggested that the group bringing suit could be required to post a bond against the value of the facility they are seeking to prevent. Video Interview with Vicki Been, *supra* note 71.

the time that it takes for the CPC and City Council to approve ULURP applications. Third, rules governing CCPs would promote fairness by requiring that the CCP consider the current distribution of LULUs throughout the city and mandate fair geographical distribution based on that current distribution.

DISADVANTAGES OF CCPS

The feasibility of a quadrennial CCP conjures concerns. The timeline itself is one problem; the city may not be able to accurately predict its needs four years in advance, and some facilities may take more than four years to site and construct. The mayor, DCP, and relevant agencies would likely need a certain amount of flexibility to plan outside of this four-year timeframe. A CCP also may be unsuitable for certain types of facilities, particularly those that must be sited quickly in cases of emergency. The ongoing migrant crisis in NYC offers a prime example: a seemingly impossible crisis to predict, requiring an immediate increase in the capacity of NYC's shelter system. For this reason, certain facilities may need to be excluded from the CCP, or at the very least, emergency procedures allowing the city to circumvent the CCP for temporary placement would be necessary so that the city could respond to crises in a timely manner.

D. Incorporation of Progressive Siting Principles

PROPOSED SOLUTION

Incorporating progressive siting principles into a reformed system of approval provides another potential method to achieve a more even distribution of LULUs. Progressive siting dictates that under-concentrated (usually wealthier) neighborhoods receive a greater number of LULUs than overconcentrated (usually poor) neighborhoods.¹⁶¹ Because it is generally understood that relocating currently operational facilities is inefficient, NYC is starting with an uneven distribution. Therefore, progressive siting of new facilities is necessary to achieve equal dispersion.¹⁶² Progressive siting and equal dispersion is achieved in four parts.

First, we recommend mandatory City Council review and approval for all LULU facilities that are sited or expanded. For site-selection applications that undergo ULURP review, this means

161. Been, *supra* note 2, at 1047.

162. *Id.*

requiring City Council review and approval to move forward, as opposed to the current system that requires only discretionary City Council review for ULURP site selection applications.¹⁶³ For actions not subject to ULURP (i.e., siting a city-contracted facility per FSC Article 9), the Fair Share Statement must be sent to City Council, which must review and approve the action. The current Article 9 process does not require any approval by the City Council.

Second, we propose a bifurcated process for City Council approval that would give greater veto power to overconcentrated districts than under-concentrated districts. This system could work in two different ways. One option would give City Council members representing “overconcentrated” districts an official veto on site selection for certain undesirable facilities in their districts. City Council members representing “under-concentrated” districts would receive no veto, and the current system of member deference would be eliminated. Alternatively, any proposed LULU in an “overconcentrated” district could require a supermajority vote of the City Council, while a proposed siting in an “under-concentrated” district would require a simple majority (again, without member deference). The exact majority requirements could be fine-tuned, but the key principle is that siting a LULU in an overconcentrated district would require a greater number of votes. Both potential frameworks would make it comparably easier for agencies to site LULUs in under-concentrated community districts than in overconcentrated districts.

Third, we define “over-concentration” and “under-concentration” as having more or fewer facilities, respectively, than a calculated numerical benchmark average. We believe each kind of facility would require its own benchmark average based on facility-specific considerations, and there are several ways to calculate these benchmarks. One option is to divide the total number of facilities—or number of residential beds, metric ton of waste processed per year, or some other measure of total capacity across all facilities—by the number of CDs (or another geographic subdivision) to calculate the number of facilities per district that would make for a “perfectly” dispersed distribution.¹⁶⁴ However, we recognize that for some kinds

163. *Step5: Uniform Land Use Review Procedure (ULURP)*, N.Y.C. PLAN., <https://www.nyc.gov/site/planning/applicants/applicant-portal/step5-ulurp-process.page> (last visited Nov. 21, 2022).

164. Video Interview with Vicki Been, *supra* note 71. A related fairness concern is that not every neighborhood is equally dense. Some would argue that if two geographic districts have equal physical space but one neighborhood has a lower population, the less populous district should be responsible for hosting fewer

of facilities, such a “perfect” distribution may be infeasible or even undesirable and alternate benchmarks may be needed. At core, however, these benchmarks should be calculated in such a way as to motivate against a geographical overconcentration of LULUs.

Lastly, these benchmark averages should be recalculated every two years (during Year One and Three of each mayoral term), during which time community districts would be re-evaluated for categorization as “overconcentrated” or “under-concentrated.”

POTENTIAL ISSUES

One issue with this proposal is that it increases City Council review, which would likely slow down the process of siting facilities. In our interviews, many current and former city agency employees noted their concerns with the slowness of the current siting process. For example, given the current homelessness crisis in NYC, the city and those who are currently unsheltered *need* homeless shelters. To close Rikers Island and end its humanitarian crisis, the city *needs* to site other detention facilities.¹⁶⁵ To have a functioning sewage system and clean-ish city, the city *needs* waste transfer stations.

The critical need for these city facilities and the concurrent need to solicit community input, which delays the process, create difficult points of tension. But solving one issue by creating another is not a solution; the city may benefit from processes that more quickly site these facilities, but it should not site them in a way that exacerbates current unequal and unjust patterns of distribution.¹⁶⁶

Benchmark averages create another issue, as the calculation of benchmark averages for different facilities would likely be contentious. People will have different views about what is fair generally and what is fair in the context of each individual facility. Each

facilities. However, some communities have specifically tried to restrict population growth (through single-family zoning and other strategies) to intentionally reduce the number of residential beds and shelters that would be placed in their community. Moreover, the reason some neighborhoods are lower density than others is not happenstance but is the result of racism, red lining, and other broader social forces that go beyond the scope of this paper.

165. They are at least necessary barring total abolition of the prison system, which is an option seriously proposed by many organizers. However, it is generally agreed that, so long as some kind of prison system remains active, Rikers can only be closed when there are other detention facilities to which current Rikers inmates can be transferred.

166. Telephone Interview with Jacqueline McMickens, *supra* note 31 (noting the City cannot wait for this homelessness and housing crisis to be “over” to fix this inequity issue).

specific kind of facility would require a unique and carefully considered benchmark.

Lastly, an issue arises whenever boundary lines are drawn; even if facilities are evenly dispersed among districts, they may still be clustered in other ways.¹⁶⁷ But a line must be drawn somewhere, and a system that would enforce greater dispersion between districts would still make it significantly harder to cluster facilities.

IV. Conclusion

Over thirty years since the advent of Fair Share in NYC, overconcentration of LULUs in low-income communities of color remains a perennial problem and a pointed political issue. Fair Share likely has had an impact for the better, but it simply has not solved the problem that it set out to solve. And at the same time, the city struggles to site desperately needed facilities in the face of overwhelming local opposition.

The city needs a system that allows it to site needed facilities but that also provides meaningful safeguards against the overconcentration of undesirable facilities. The FSC, as they stand, are not up to these tasks. Serious changes are needed. We have provided a few (ambitious) options, but the first step towards any change is to acknowledge that the current system is not working as it should. Because this system is not working, we hope that policymakers will take a hard look and that the city government will be open to changes that promote efficiency without sacrificing equity.

167. See Simone Wilson, *At Least 3 New Homeless Shelters Coming to Prospect Heights, Crown Heights*, PATCH (Mar. 1, 2017, 7:27 PM), <https://patch.com/new-york/prospectheights/least-3-new-homeless-shelters-coming-prospect-heights-crown-heights> (noting that although the three shelters will sit in two separate CDs, they will all be within a one-mile radius of each other).

Appendices

METHODOLOGY

Appendices A–D

Our data analysis is mainly descriptive, with the intent of showing how our LULUs of interest are currently distributed. Using facility data from the Department of City Planning Capital Planning Explorer,¹⁶⁸ we created choropleth maps (Figures 1–3) mapping non-residential housing and homeless services facilities, detention facilities, and solid waste transfer facilities over indicators of poverty and race. Blue and red circles on the maps represent the locations of these facilities. **It should be noted that the DCP Capital Planning Explorer does not include comprehensive data on shelter locations.** For the purposes of Figures 1a and 1b, we use data from DHS, and the circle radiuses correspond to the number of shelters in the CD/Community District Tabulation Area (CDTA).¹⁶⁹ The poverty level and race data come from the five-year ACS Data Tables (demographic and economic profiles) and is provided at the CDTA level.¹⁷⁰

CDTAs approximate CDs and are essentially interchangeable for analysis purposes. Therefore, we map demographic and facility data at the CDTA level because the siting process for city facilities incorporates participation from the CBs representing each CD (i.e., fifty-nine CBs represent fifty-nine CDs). (**Note:** we use CD and CDTA interchangeably throughout and so consider that BX03 CDTA is equivalent to Bronx CD 3. The CDTAs were designed to be matched in this way and offer the best available data for CDs.) We also include tables that show the top five CDTAs with the highest count and share of a certain kind of facility (Tables 1 and 6).

168. *Capital Planning Explorer*, N.Y.C. PLAN., <https://capitalplanning.nyc.gov/map/facilities#10/40.7128/-74.0807> (last visited Sept. 6, 2023).

169. *2020 Census Reconfiguration of Statistical Geographies*, N.Y.C. PLAN., <https://storymaps.arcgis.com/stories/d30850ba28944619b94e8ee4f746d5c4> (last visited Sept. 6, 2023).

170. *American Community Survey (ACS) Data Tables*, N.Y.C. PLAN., <https://www.nyc.gov/site/planning/planning-level/nyc-population/american-community-survey.page> (last visited Sept. 6, 2023).

We compiled data from DCP's Community District Profiles¹⁷¹ and Population Factfinder¹⁷² to create other basic summary tables displaying CD demographics (see Tables 2 through 5) for areas with the highest number and share of this paper's problematic LULUs. Note that the data for tables that reference "NYCgov Poverty Rate" come from Community District Profiles—Summary Community District Profile for each CD in the Resources Tab.¹⁷³

171. *Community District Profiles*, N.Y.C. PLAN., <https://communityprofiles.planning.nyc.gov/about> (last visited Sept. 6, 2023).

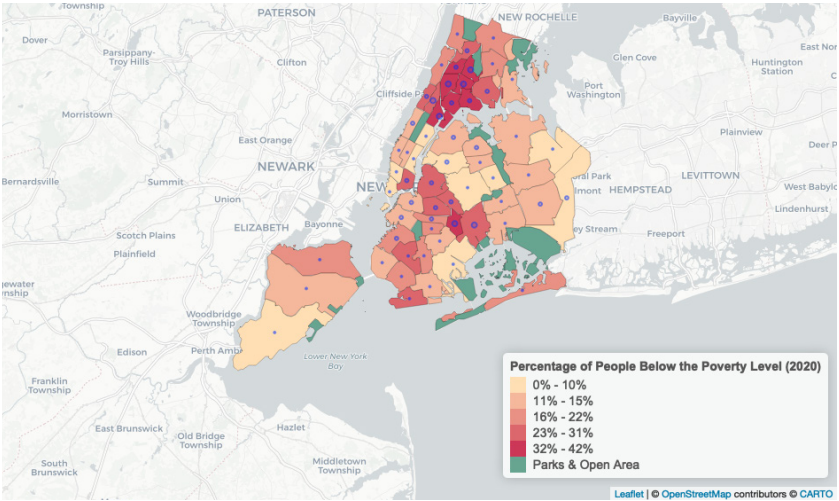
172. *Population FactFinder*, N.Y.C. PLAN., <https://popfactfinder.planning.nyc.gov/#11.67/40.7198/-73.9515> (last visited Sept. 6, 2023).

173. *Community District Profiles*, *supra* note 171.

APPENDIX A: Shelters

Figure 1a: Distribution of Shelters and Poverty (2020)

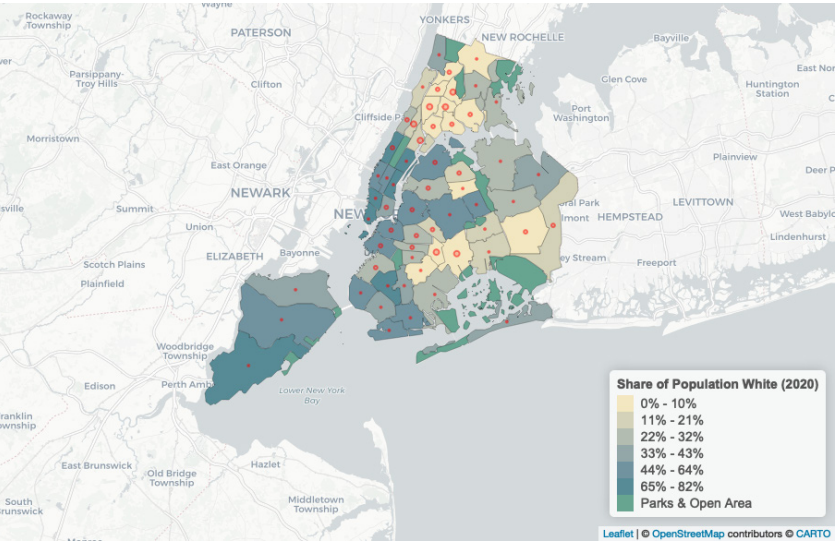
Figure 1a displays the share of people in poverty along with information on the number of shelters in each CD/CDTA. Shelter information comes from DHS. The size of each circle's radius on the map corresponds directly to the number of shelters in a given CD/CDTA in which the circle is located.



Source: Capital Planning Explorer, DCP-Population American Community Survey (ACS) Data Tables; NYC DHS, Department of Social Services (DSS), A Map of NYC DHS Shelter Locations as of July 2022 (2022). *Please note that the NYC DCP Capital Planning Explorer does not include comprehensive data on shelter locations. The Capital Planning Explorer does include Non-Residential Housing and Homeless Services Facilities.*

Figure 1b: Distribution of Shelters and Race (2020)

Figure 1b displays racial characteristics along with information on the number of shelters in each CD/CDTA. Shelter information comes from DHS. The size of each circle’s radius on the map corresponds directly to the number of shelters in a given CD/CDTA in which the circle is located.



Source: Capital Planning Explorer, DCP-Population ACS Data Tables; NYC DHS, DSS (2022). Please note that the NYC DCP Capital Planning Explorer does not include comprehensive data on shelter locations. The Capital Planning Explorer does include Non-Residential Housing and Homeless Services Facilities.

Table 1: Distribution of Shelters Across CDTAs

Table 1 displays the top five CDTAs based on the number and share of shelters within their boundaries. Facility information comes from the NYC Department of Homeless Services.

Shelters by CDTA		
The top five CDTAs with shelters		
CDTA 2020	Number of Shelters	Shelters (% of the total)
BK16	22	6.49%
BX06	21	6.19%
MN10	19	5.60%
BX04	16	4.72%
MN11	16	4.72%

Source: New York City Department of Homeless Services, Department of Social Services (2022)

Table 2: Demographics of the Top Five CDs/CDTAs with Shelters

Table 2 displays sociodemographic information for the top five CDTAs with shelters. Sociodemographic information comes from DCP’s CD Profiles and Population Factfinder.

Community District	People below the poverty line (%) ¹	Share of White Population (%)
	<i>NYC - 20%</i>	<i>(2020)</i>
Brooklyn CD 16	29%	3.5%
Bronx CD 6	30%	6.4%
Manhattan CD 10	20%	15.2%
Bronx CD 4	32%	2.2%
Manhattan CD 11	22%	8.0%

Sources: NYC Planning | CD Profiles, 2013–2017 NYCgov Poverty Measure by PUMA1; NYC Planning | Population Factfinder, Mutually Exclusive Race / Hispanic Origin (2020)

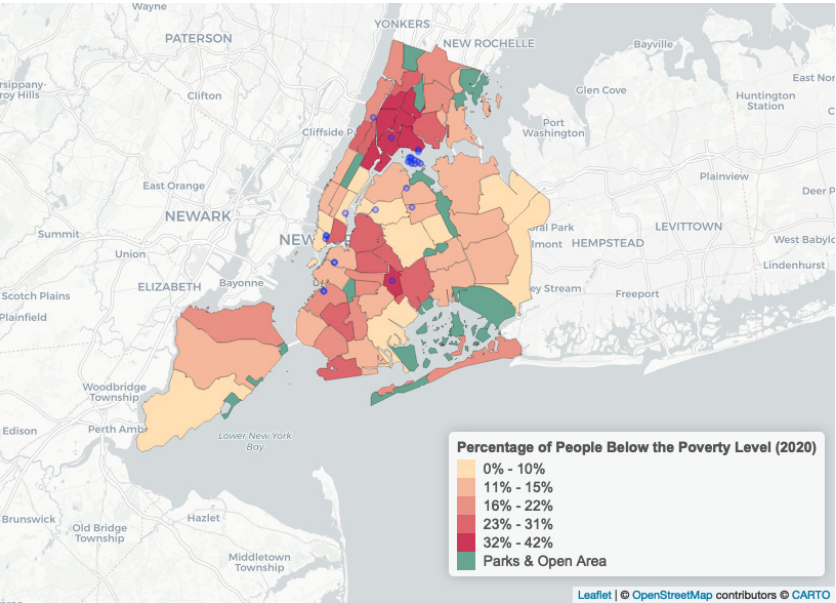
Notes on Tables 1 and 2

Both Table 1 and 2 describe Figures 1a and 1b. In Table 1, the CDTA with the greatest number of shelters is in Brooklyn, specifically in the neighborhoods of Broadway Junction, Brownsville, and Ocean Hill. Almost a third of residents in CDTA BK16 are below the NYCgov poverty threshold. Two of the top five CDTAs with shelters are in the Bronx (BX06 and BX04), which contains a combined thirty-seven shelters. More than a quarter of the residents in these CDTAs have incomes below the NYCgov poverty threshold, and these CDTAs tend to have higher populations of people of color. Note that CDTA MN10 (representative of Manhattan CD 10)—consisting of Central Harlem—contains nineteen shelters. Twenty percent of residents in this CD have incomes below the NYCgov poverty threshold, and a larger share of the population is white. Finally, CDTA MN11 (representative of Manhattan CD 11)—consisting of East Harlem, Harlem, Randall’s Island Park, Wards Island Park—contains sixteen shelters. Twenty-two percent of the residents in this CDTA have incomes below the NYCgov poverty threshold. More than two-thirds of the residents in this CDTA are Hispanic and Black/African American.

APPENDIX B: Prisons

Figure 2a: The Distribution of Jails and Poverty (2020)

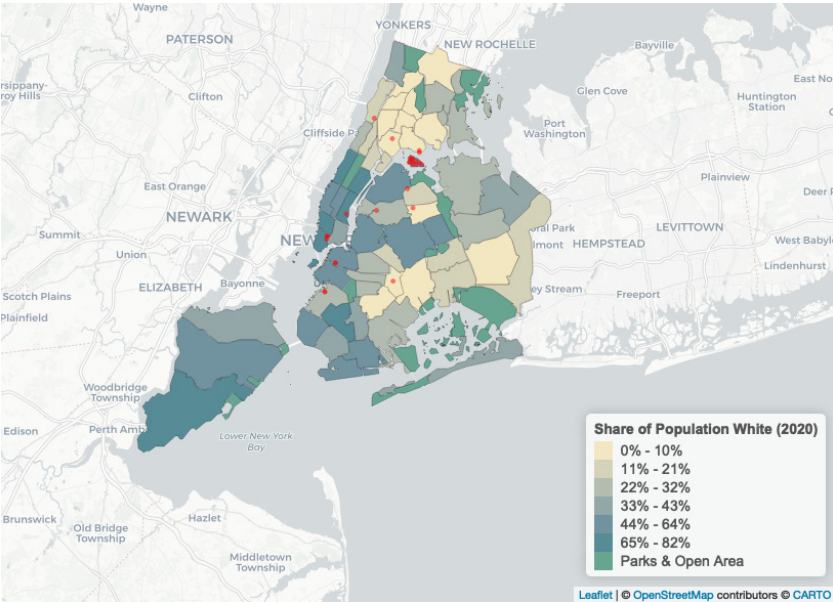
Figure 2a displays the share of people in poverty along with information on the number of jails in each CD/CDTA. Jail facility information comes from DCP. The number of circles on the map corresponds directly to the number of jails in a given CD/CDTA.



Source: Capital Planning Explorer; DCP-Population American Community Survey (ACS) Data Tables

Figure 2b: The Distribution of Jails and Race (2020)

Figure 2b displays racial characteristics along with information on the number of jails in each CD/CDTA. Jail facility information comes from DCP. The number of circles on the map corresponds directly to the number of jails in a given CD/CDTA.



Source: Capital Planning Explorer; DCP-Population American Community Survey (ACS) Data Tables

Table 3: Current Detention Facilities in NYC Outside of Rikers Island

Table 3 displays detention facility information and sociodemographic information. Facility information comes from NYC Facilities Database, and demographic information comes from DCP CD profiles and Population Factfinder.

NYC Planning - Community Profiles <i>Citywide NYCgov poverty measure: 20%</i> NYC Planning - Population Factfinder <i>Citywide percentage of population white, non-hispanic: 30.9%</i> Key: ■ - above average citywide poverty level / above average citywide percentage of non-white residents (i.e., poorer and less white) ■ - below average citywide poverty level / below average citywide percentage of non-white residents (i.e., richer and more white) ■ - at citywide measure	
Bronx Facilities	
Bronx CD 1: NYCgov poverty measure: 31% Percentage of population white, non-hispanic: 2.5%	Horizon Juvenile Center 560 Brook Avenue, Bronx, NY 10455 City facility: Under the jurisdiction of NYC Administration for Children's Services
Bronx CD 2: NYCgov poverty measure: 31% Percentage of population white, non-hispanic: 1.7%	Vernon C. Bain Center 1 Halleck Street, Bronx, NY 10474 City facility: Under the jurisdiction of NYC Department of Corrections

Manhattan Facilities	
Manhattan CD 1: NYCgov poverty measure: 9% Percentage of population white, non-hispanic: 62.9%	Manhattan Detention Complex 125 White Street, New York, NY 10013 City facility: Under the jurisdiction of the NYC Department of Corrections Currently closed and will be replaced as part of the city's borough-based jail project Metropolitan Correctional Center 150 Park Row, New York, NY 10007 Federal facility: Under the jurisdiction of the Federal Bureau of Prisons
Manhattan CD 6: NYCgov poverty measure: 10% Percentage of population white, non-hispanic: 65.1%	Bellevue Hospital Prison Ward 462 1 Avenue, New York, NY 10016 City facility: Under the jurisdiction of the NYC Department of Corrections
Manhattan CD 12: NYCgov poverty measure: 20% Percentage of population white, non-hispanic: 21.2%	Edgecombe Residential Treatment Facility 611 Edgecombe Avenue, New York, NY 10032 State facility: Under the jurisdiction of the New York State Department of Corrections

Brooklyn Facilities	
Brooklyn CD 2: NYCgov poverty measure: 11% Percentage of population white, non-hispanic: 48.5%	Brooklyn Detention Complex 275 Atlantic Avenue, Brooklyn, NY 11201 City facility: Under the jurisdiction of the NYC Department of Corrections Currently closed and will be replaced as part of the city's borough-based jail project
Brooklyn CD 7: NYCgov poverty measure: 28% Percentage of population white, non-hispanic: 24.0%	Metropolitan Detention Center, Brooklyn 100 29 Street, Brooklyn, NY 11232 Federal facility: Under the jurisdiction of the Federal Bureau of Prisons
Brooklyn CD 16: NYCgov poverty measure: 29% Percentage of population white, non-hispanic: 3.5%	Crossroads Juvenile Detention Center 17 Bristol Street, Brooklyn, NY 11212 City facility: Under the jurisdiction of NYC Administration for Children's Services (ACS)
Queens Facilities	
Queens CD 2 NYCgov poverty measure: 19% Percentage of population white, non-hispanic: 28.5%	Queensboro Correctional Facility 47-04 Van Dam Street, Long Island City, NY 11101 State facility: Under the jurisdiction of the New York State Department of Corrections
Queens CD 3 NYCgov poverty measure: 24% Percentage of population white, non-hispanic: 9.9%	Bulova Building—DOC Headquarters (an administrative building for the NYC Department of Corrections, but also houses prisoners) 75-20 Astoria Boulevard, East Elmhurst, NY 11370 City facility: Under the jurisdiction of the NYC Department of Corrections

Queens CD 4 NYCgov poverty measure: 26% Percentage of population white, non-hispanic: 5.2%	Elmhurst Hospital Prison Ward 79-01 Broadway, Elmhurst, NY 11373 City facility: Under the jurisdiction of the NYC Department of Corrections
Queens CD 9 NYCgov poverty measure: 22% Percentage of population white, non-hispanic: 15.1%	Queens Detention Complex 120-01 82nd Street, Kew Gardens, NY 11415 City facility: Under the jurisdiction of the NYC Department of Corrections Currently closed and will be replaced as part of the city’s borough-based jail project

Source: NYC Facilities Database; NYC Planning | CD Profiles, 2013–2017 NYCgov Poverty Measure by PUMA; NYC Planning | Population Factfinder, Mutually Exclusive Race / Hispanic Origin (2020)

Notes on Table 3

The NYC Facilities Database lists “New Fulton Fish Market” at 800 Food Center Drive, Bronx, NY 10474 as a “jail,” but we have not verified that a jail exists at this location or this name. We assume that this is an error in the database, perhaps a double-count of the neighboring Vernon C, Bain Center, and did not include this facility in the total count.

The Facilities Database also lists the “Brooklyn House of Detention” and the “Brooklyn Detention Complex” as two distinct facilities, but both facilities share the same address. This appears to be a single facility, and the names are used interchangeably in news articles.¹⁷⁴ We have treated this location as a single facility.

Similarly, the Facilities Database lists the Metropolitan Detention Center (MDC), Brooklyn and the Residential Reentry Management Program (RPM), New York as two separate facilities, but these supposedly distinct facilities share the same address. RPM

174. *Brooklyn’s House of Detention Closes Under De Blasio’s New Jails Plan*, *GOTHAMIST* (Jan. 3, 2020), <https://gothamist.com/news/brooklyns-house-detention-closes-under-de-blasios-new-jails-plan>.

New York appears to be simply a reentry program¹⁷⁵ run within the MDC facility. We have again treated this location as a single facility.

More complicated is the Manhattan Detention Complex (MDC) at 125 White Street and the Criminal Courthouse Detention Complex at 100 Center Street. While these buildings have separate addresses, the jail and the court are physically connected by an overhang.¹⁷⁶

The city is in the process of tearing down and replacing the MDC, but plans¹⁷⁷ for the new Manhattan jail show that it will remain physically connected to the courthouse. To the extent that the courthouse holds prisoners, it appears to do so only temporarily as these prisoners are transported to and from court appearances.¹⁷⁸ And perhaps most importantly, from conversations with community members, the courthouse does not appear to be *perceived* by locals as a distinct detention facility. For all these reasons, we have not counted the courthouse as a distinct detention facility.

175. *RRM Statistics*, Federal Bureau of Prisons, <https://www.bop.gov/locations/ccm/cnk>.

176. *Manhattan Detention Complex Dismantle And New York County Criminal Courthouse Interim Sally Port*, DEP'T OF DESIGN & CONSTR. (Apr. 11, 2022), <https://www.nyc.gov/assets/designcommission/downloads/pdf/04-11-2022-pres-DDC-pf-BBJ-MN-sallyport.pdf>.

177. *Design Principles & Guidelines*, NYC DEP'T OF DESIGN & CONSTR.: BOROUGH-BASED JAILS PROGRAM: A DESIGN-BUILD PROGRAM (Jan. 2022), <https://rikers.cityofnewyork.us/wp-content/uploads/BBJ-MN-FAC-Design-Guidelines-Public-Version-211221-1.pdf>.

178. *Manhattan Detention Complex Dismantle*, *supra* note 176.

Table 4: Socio-demographics of Areas Surrounding Borough-Based Jails

Table 4 displays socio-demographic information for areas surrounding borough-based jails and the corresponding citywide information. Sociodemographic information comes from DCP’s CD Profiles and Population Factfinder.

124-125 White Street, Manhattan—Sociodemographics		
	CD 1	Citywide—NYC
Hispanic/Latino (of any race)	8.8%	28.3%
Non-Hispanic White	62.9%	30.9%
Non-Hispanic Black/African American	3.8%	20.2%
Non-Hispanic Asian	18.2%	15.6%
Rent Burden	31%	45%
Unemployment	2.8%	4.9%
Poverty Measure	9%	20%
275 Atlantic Avenue, Brooklyn—Sociodemographics		
	CD 2	Citywide—NYC
Hispanic/Latino (of any race)	13.1%	28.3%
Non-Hispanic White	48.2%	30.9%
Non-Hispanic Black/African American	19.2%	20.2%
Non-Hispanic Asian	12.8%	15.6%
Rent Burden	31%	45%
Unemployment	5.1%	4.9%
Poverty Measure	11%	20%
126-02 82nd Avenue, Queens—Sociodemographics		
	CD 9	Citywide—NYC
Hispanic/Latino (of any race)	41.6%	28.3%
Non-Hispanic White	15.1%	30.9%
Non-Hispanic Black/African American	6.7%	20.2%
Non-Hispanic Asian	25.4%	15.6%
Rent Burden	47%	45%
Unemployment	4.7%	4.9%
Poverty Measure	22%	20%
745 E 141st Street, Bronx—Sociodemographics		
	CD 1	Citywide—NYC
Hispanic/Latino (of any race)	66.6%	28.3%
Non-Hispanic White	2.5%	30.9%
Non-Hispanic Black/African American	27.5%	20.2%
Non-Hispanic Asian	0.9%	15.6%
Rent Burden	48%	45%
Unemployment	5.9%	4.9%
Poverty Measure	31%	20%

Sources: NYC Planning | Population Factfinder, Mutually Exclusive Race / Hispanic Origin (2020), NYC Planning | CD Profiles, 2013–2017 NYCgov Poverty Measure by PUMA

APPENDIX C: Waste Transfer Stations

Table 5: Intro-157-C: Overburdened Communities

Table 5 displays the CDs with the highest shares of waste capacity throughout the city along with socio-demographic information. These communities were defined as overburdened in the Intro-157 legislation.

Overburdened Area	Waste Capacity ¹		Demographics ²	Poverty ³
North Brooklyn— CD 1	38%	7,003 tons/day	White (non-Hispanic)— 61.3 % Hispanic Latino (any race)—22.3%	15.4%
South Bronx—CD 1, 2 (combined)	22%	6,361 tons/day	Hispanic Latino (any race)—68.3% Black/African American—26.3%	31%
Southeast Queens— CD 12	4%	1,682 tons/day	Black/African American—53.9% Hispanic/Latino (any race)—18.1% Asian nonhispanic—15.2%	19%

Source: Mayor de Blasio and Speaker Johnson Celebrate Signing of Waste Equity Legislation | City of New York (nyc.gov) NYC Planning | Population Factfinder, Mutually Exclusive Race / Hispanic Origin (2020) NYC Planning | CD Profiles, 2013–2017 NYCgov Poverty Measure by PUMA.

In 2018, Intro-157 legislation, which was sponsored by former City Council members Antonio Reynoso and Stephen Levin, passed, becoming the city’s Waste Equity Law. This law sought to “reduce the permitted capacity at putrescible and non-putrescible solid waste transfer stations in overburdened community districts.”¹⁷⁹ The Waste

¹⁷⁹ *Reducing Permitted Capacity at Putrescible and Non-Putrescible Solid Waste Transfer Stations in Overburdened Districts*, Int 0157-2018 (Jan. 31, 2018), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3331918&GUID=B730F207-D5EF-45B3-9F9E-9F356EFC58C0> (enacted Aug. 16, 2018).

Equity Law also restricts¹⁸⁰ these communities from receiving new waste transfer stations and/or additional permitted capacity. A 2018 report on the bill highlighted that twenty-six out of the thirty-eight private WTSs were located in three primary neighborhoods: North Brooklyn, South Bronx, and Southeast Queens.¹⁸¹ These communities (comprised mostly of people of color with the exception of Brooklyn CD 1, which has experienced rapid gentrification within the past twenty years) not only had a greater share of the city's WTSs but also bore a greater burden of having to receive waste from other boroughs as a result of siting considerations and zoning ordinances following the closing of NYC landfills.

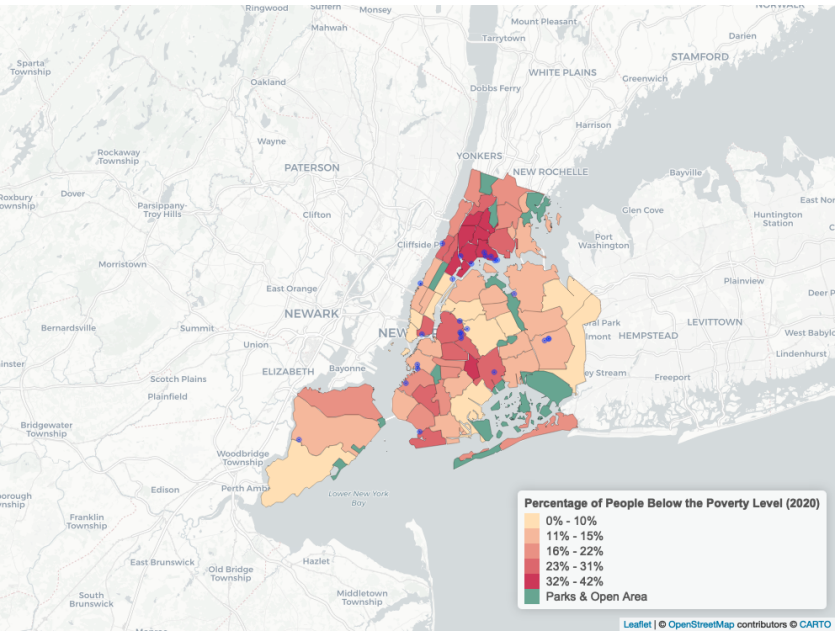
North Brooklyn, specifically Brooklyn CD 1, retains a large share of the city's waste capacity. Over half of this district's population is white (non-Hispanic), and the district has a poverty level below the citywide average (twenty percent). South Bronx CDs 1 and 2 also retain a substantial portion of the city's waste capacity. These areas are composed of mainly Hispanic and Black residents, and both of these CDs have poverty levels well above the city average. Finally, Southeast Queens, specifically CD 12, also retains a notable portion of the city's waste capacity. Over half of the population of CD 12 is Black, and the district has a poverty level below the citywide average.

180. *Mayor de Blasio and Speaker Johnson Celebrate Signing of Waste Equity Legislation*, OFFICIAL WEBSITE OF THE CITY OF NEW YORK (Aug. 16, 2018), <https://www.nyc.gov/office-of-the-mayor/news/417-18/mayor-de-blasio-speaker-johnson-celebrate-signing-waste-equity-legislation#:~:text=Intro%20157%2DC%2C%20known%20as,new%20waste%20transfer%20stations%20in.>

181. Proposed Int. No. 157-C, COUNCIL OF THE CITY OF NEW YORK COMMITTEE REPORT OF THE INFRASTRUCTURE DIVISION (2018), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3331918&GUID=B730F207-D5EF-45B3-9F9E-9F356EFC58C0>.

Figure 3a. The Distribution of Public and Non-Public Waste Transfer Facilities and Poverty (2020)

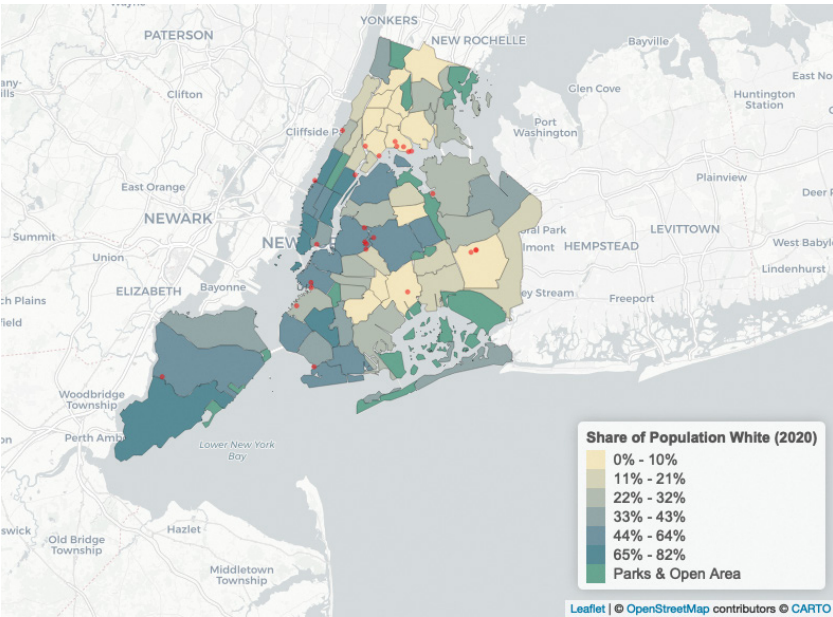
Figure 3a displays the share of people in poverty along with information on the number of waste transfer facilities in each CD/CDTA. Waste Transfer Facility information comes from DCP. The number of circles on the map corresponds directly to the number of waste transfer stations in a given CD/CDTA.



Source: Capital Planning Explorer; DCP-Population American Community Survey (ACS) Data Tables

Figure 3b. The Distribution of Public and Non-Public Waste Transfer Facilities and Race (2020)

Figure 3b displays racial characteristics along with information on the number of waste transfer facilities in each CD/CDTA. Waste Transfer Facility information comes from DCP. The number of circles on the map corresponds directly to the number of waste transfer stations in a given CD/CDTA.



Source: Capital Planning Explorer; DCP-Population American Community Survey (ACS) Data Tables

Table 6: The Distribution of Waste Transfer Stations Across CDTAs

Table 6 displays the top five CDTAs based on the number and share of public and non-public waste transfer stations within their boundaries. Facility information comes from NYC Facilities Capital Planning Explorer.

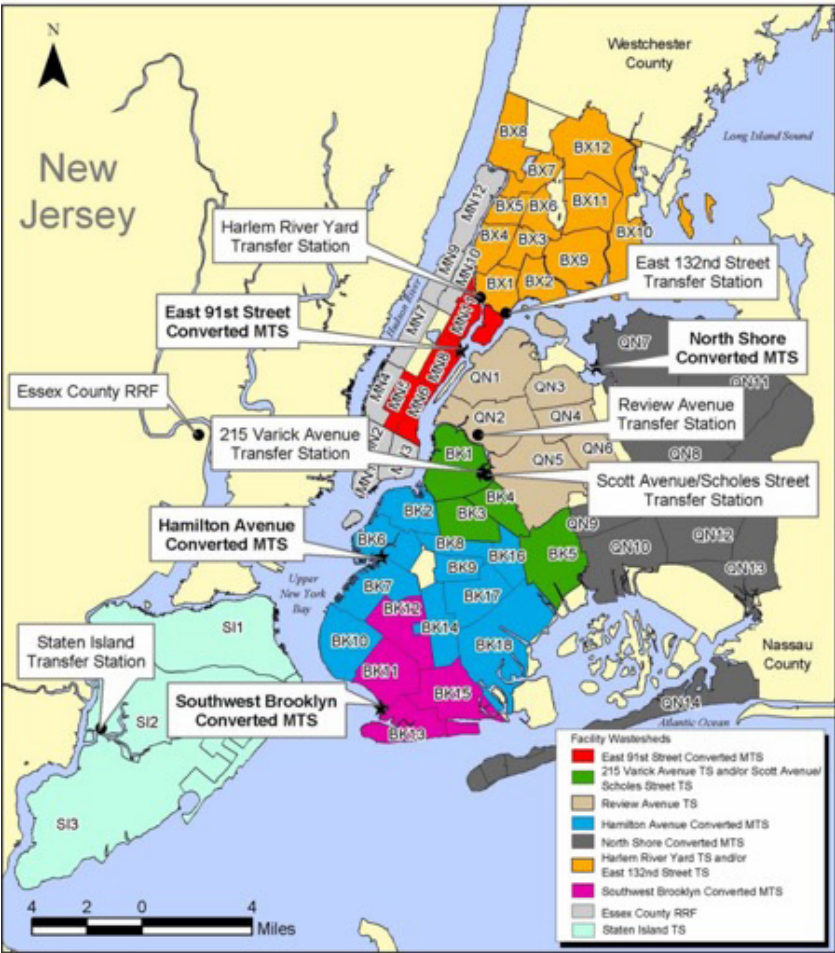
Public and Non-Public Waste Transfer Stations by CDTA		
Top five CDTAs with Waste Transfer Stations		
CDTA 2020	Number of Waste Transfer Stations	Waste Transfer Stations (% of the total)
BX02	6	19.35%
BK01	4	12.90%
QN12	3	9.68%
BK07	2	6.45%
BX01	2	6.45%
Source: Department of City Planning (DCP)		

Note on Table 6

Table 6 helps describe both Figures 3a and 3b. Based on the data from Capital Explorer (DCP), BX02 and BX01 (Bronx CD 1 and 2) contain eight WTSs. These areas encapsulate the South Bronx. BK01 (Brooklyn CD 1) contains four WTSs and encapsulates North Brooklyn. QN12 (Queens CD 12) contains three WTSs and encapsulates Southeast Queens. All of these CDTAs correspond to the four neighborhoods previously mentioned in Table 5 that retain the largest share of the city’s waste according to the 2018 report for the *Waste Equity Law*. (Note: BK07 contains the Hamilton Avenue Marine Transfer Station, which Capital Explorer has listed multiple times under different street addresses.)

Figure 4. Locations of SWMP Long-Term Export Facilities and Watersheds

Figure 4 comes from the DSNY 2006 About SWMP (page 4)¹⁸² and displays the distribution of the SWMP Long Term Export Facilities and Wastesheds Served across boroughs and CDs.



182. *About SWMP*, CITY OF NEW YORK ch. 3 (2006), https://dsny.cityofnewyork.us/wp-content/uploads/2017/12/about_swmp_ch3_0815.pdf.

Table 7. Proposed SWMP Long Term Export Facilities and Potential Contractors

Table 7 comes from the DSNY 2006 About SWMP (page 5)¹⁸³ and displays long term export facilities designated in the long term program in place of interim export contracts.

Facility Type	Owner, Facility Name, and Address	Community District	Wasteshed Served – Community Districts
Converted MTS ⁽¹⁾	DSNY Hamilton Avenue Converted MTS, Hamilton Avenue at Gowanus Canal, Brooklyn	Brooklyn 7	Brooklyn CDs 2, 6, 7, 8, 9, 10, 14, 16, 17 and 18
Converted MTS ⁽¹⁾	DSNY Southwest Brooklyn Converted MTS, Shore Pkwy at Bay 41 st Street, Brooklyn	Brooklyn 11	Brooklyn CDs 11, 12, 13 and 15
Converted MTS ⁽¹⁾	DSNY East 91 st Street Converted MTS, Manhattan	Manhattan 8	Manhattan CDs 5, 6, 8 and 11
Converted MTS ⁽¹⁾	DSNY North Shore Converted MTS, 31 st Avenue and 122 nd Street, Queens	Queens 7	Queens CDs 7 through 14
Truck-to-Rail TS	Waste Management Harlem River Yard, 98 Lincoln Avenue, Bronx	Bronx 1	Bronx CDs 1 through 12
Truck-to-Rail TS ⁽²⁾	Allied Waste Services, East 132 nd Street Transfer Station, Bronx and Oak Point Rail Yard, Oak Point Avenue and Barry Street, Bronx	Bronx 1	Bronx CDs 1 through 12
Truck-to-Rail TS	Waste Management, 215 Varick Avenue, Brooklyn	Brooklyn 1	Brooklyn CDs 1, 3, 4 and 5
Truck-to-Rail TS	Allied, 72 Scott Avenue-598 Scholes Street, Brooklyn	Brooklyn 1	Brooklyn CDs 1, 3, 4 and 5
Truck-to-Rail/Barge TS ⁽³⁾	Waste Management, 30-58 Review Avenue, Queens and the LIRR Maspeth Rail Yard, Maspeth Avenue and Rust Street Queens	Queens 2	Queens CDs 1 through 6
Waste-to-Energy Facility ⁽⁴⁾	Port Authority of New York and New Jersey, Essex County RRF, Newark, New Jersey	N/A	Manhattan CDs 1, 2, 3, 4, 7, 9, 10 and 12
Truck-to-Rail Transfer Station ⁽⁵⁾	DSNY Staten Island Transfer Station West Service Road, Staten Island	Staten Island 2	Staten Island CDs 1 through 3

183. *Id.*

APPENDIX D: Interview List

1. **Roderick Hills.** Professor of Law, New York University School of Law (Oct. 6, 2022).
2. **Eric Lane.** Professor of Law, Maurice A. Deane School of Law at Hofstra University; Former Counsel and Executive Director of New York City Charter Revision Commission 1989 (Oct. 7, 2022).
3. **Manohar Patole.** Professor of Urban Planning, New York University Wagner Graduate School of Public Service; Co-City Fellow and Project Manager for Co-City Baton Rouge (CCBR) (Oct. 7, 2022).
4. **Brandon Jordan.** Legislative and Budget Director, Council Member Julia Menin's office (District 5) (Oct. 14, 2022).
5. **John Mangin.** Director of Housing Division, NYC Department of City Planning; Adjunct Assistant Professor of Urban Planning, New York University Wagner Graduate School of Public Service (Oct. 28, 2022).
6. **Susan Amron** (General Counsel) and **Sarah Whitham** (Senior Manager, City Facilities Planning), Department of City Planning (Oct. 31, 2022).
7. **John Douglas** (Director of Land Use and Topography) and **Erin Buchanan** (Deputy Director of Land Use), Brooklyn Borough President Staff (Nov. 3, 2022).
8. **Ken Knuckles.** Vice Chair, NYC City Planning Commission; Former Deputy Bronx Borough President (Nov. 3, 2022).
9. **Michael Freedman-Schanpp.** Managing Director, Financial Advisory. Forsyth Street (Nov. 3, 2022).
10. **Vicki Been.** Associated Professor of Public Policy, New York University Wagner Graduate School of Public Service; Professor of Law, New York University School of Law (Nov. 4, 2022).
11. **Muzzy Rosenblatt.** CEO and President, Bowery Residents' Committee (Nov. 8, 2022).

12. **Jacqueline McMickens.** Founder of Jacqueline McMickens & Associates PLLC; Lawyer for Community in Rebirth of Bergen Street (Nov. 9, 2022).
13. **Carl Weisbrod.** Former Chairman, NYC Planning Commission; Former Director, DCP Senior Advisor, HR&A Advisors (Nov. 11, 2022).
14. **Arvind Sindhvani.** Director of Land Use & Community Advocate at Council Member Lincoln Restler's Office (D-33) (Nov. 11, 2022).
15. **Victoria Lee.** Cofounder, Welcome to Chinatown (Nov. 18, 2022).

APPENDIX E: Miscellaneous Recommendation

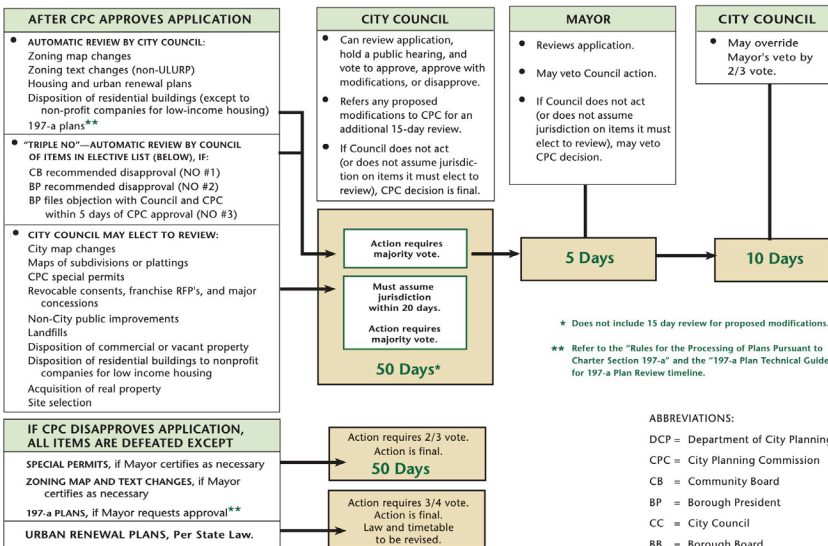
Additional recommendations for improving the Fair Share process include:

- 1) **Incorporate Value-Adding Component in Siting LULUs.** If agencies cannot find alternative places to site LULUs, CPC can update FSC to require these agencies to make projects more “palatable.” For example, agencies can introduce a project that a community does not want along with another project the community does want (i.e., green space, a park, a new library) (Manohar Patole). Though this process would not satisfy the criteria for geographical fairness, it would satisfy the criteria on the basis of “neighborhood compensation to host communities.” (Vicki Been).
- 2) **Require Consistent (Accessible) Report on FSC.** CPC could require DCP to release an annual or bi-annual report to stakeholders that tracks how the city is/is not successfully implementing FSC (Section 204).
- 3) **Make Data More Accessible and Easy to Use:** DCP can include more data/maps to show the distribution of LULUs and/or how that distribution changes over time. DCP also can improve the accessibility of Fair Share Analysis Documents (Section 203, 204).

APPENDIX F: ULURP Process¹⁸⁴

Uniform Land Use Review Procedure (ULURP)

CITY MAP CHANGES MAPS OF SUBDIVISIONS PLATTINGS ZONING MAP CHANGES CPC SPECIAL PERMITS REVOCABLE CONSENTS FRANCHISE RFP's MAJOR CONCESSIONS NON-CITY PUBLIC IMPROVEMENTS HOUSING AND URBAN RENEWAL PLANS LANDFILLS DISPOSITION OF REAL PROPERTY ACQUISITION OF REAL PROPERTY SITE SELECTION	DEPARTMENT OF CITY PLANNING Application and Pre-Certification	COMMUNITY BOARD	BOROUGH PRESIDENT and BOROUGH BOARD	CITY PLANNING COMMISSION	SEE FLOW CHART BELOW FOR THE PROCESS FOR CITY COUNCIL AND MAYORAL REVIEW (Charter Section 197-d)
	<ul style="list-style-type: none"> Receives application and related documents. Forwards application and documents within 5 days to CB, BP, and CC (and BB, if project affects more than one CB). Certifies application as complete. 	<ul style="list-style-type: none"> Notifies public. Holds public hearing. Submits recommendation to CPC, BP (and BB). Can waive rights on franchise RFP's and leases. 	<ul style="list-style-type: none"> BP submits recommendation to CPC or waives right to do so. BB (if project affects more than one CB) may hold a public hearing and submit recommendation to CPC or waive right to do so. 	<ul style="list-style-type: none"> Holds public hearing. Approves, modifies or disapproves application. Files approvals and approvals with modifications with City Council. Disapprovals are final, except for zoning map changes, special permits, and urban renewal plans. 	
PROCESS TAKES	No Specified Time Limit (after 6 months, applicant or BP in some cases, may appeal to CPC for certification).	60 Days	30 Days	60 Days	
<i>Clock = 1 Year</i>					
TOTAL DAYS		60 Days	90 Days	150 Days	



184. *Uniform Land Use Review Procedure (ULURP)*, CITY OF NEW YORK, <https://www.nyc.gov/assets/planning/download/pdf/applicants/applicant-portal/lur.pdf> (last visited Feb. 9, 2014).