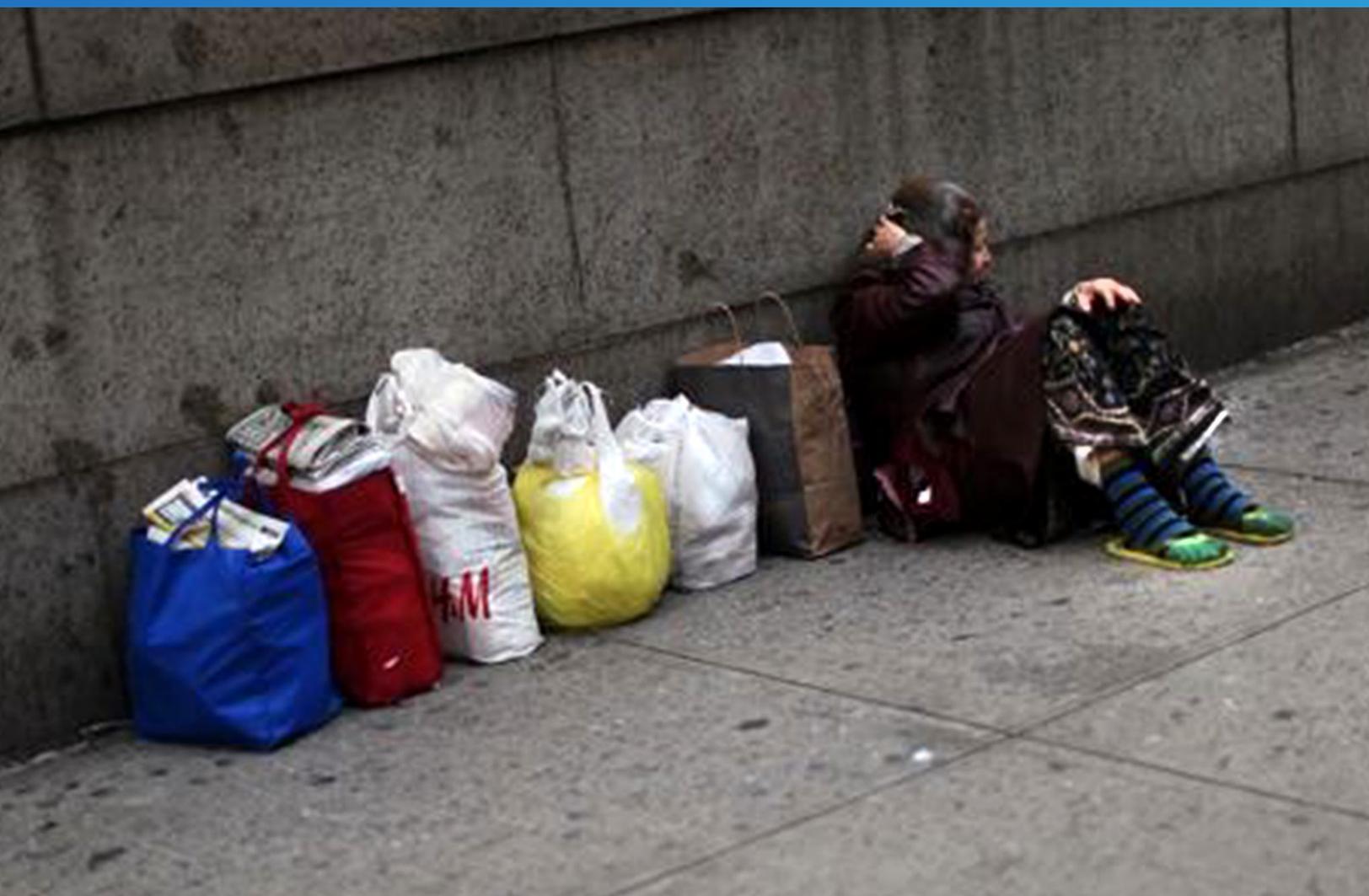


# *Down and Out:* How New York City Places its Homeless Shelters



NEW YORK CITY COMPTROLLER  
JOHN C. LIU

MAY 2013

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# **DOWN AND OUT:** **How New York City Places Its Homeless Shelters**

**May 2013**

Published by the New York City  
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## **About the New York City Comptroller's Office**

The New York City Comptroller, an independently elected official, is the Chief Financial Officer of the City of New York. The mission of the office is to ensure the financial health of New York City by advising the Mayor, the City Council, and the public of the City's financial condition. The Comptroller also makes recommendations on City programs and operations, fiscal policies, and financial transactions. In addition, the Comptroller manages the assets of the five New York City Pension Funds, performs budgetary analysis, keeps the City's accounts, audits City agencies, manages the City's debt issuance, and registers proposed contracts. His office employs a workforce of more than 700 professional staff members. These employees include accountants, attorneys, computer analysts, economists, engineers, budget, financial and investment analysts, claim specialists, and researchers, in addition to clerical and administrative support staff.



## INTRODUCTION

In 1989, the New York City Charter required the mayor, in consultation with the borough presidents, to establish rules for siting, expanding, and disposing of City facilities.<sup>1</sup> In 1990, the New York City Planning Commission (CPC) adopted a set of criteria to guide decision-making for the placement of City facilities. Known as the Fair Share Criteria, these rules were intended to “*further the fair distribution of the burdens and benefits associated with City facilities, consistent with community needs for services and efficient and cost effective delivery of services.*”<sup>2</sup>

The Fair Share Criteria are guided by eight core goals:

1. To site facilities equitably by balancing the considerations of community needs for services, efficient and cost-effective service delivery, and the social, economic, and environmental impacts of City facilities upon surrounding areas;
2. Base its siting and service allocation proposals on the City’s long-range policies and strategies; sound planning, zoning, and budgetary principles; and local and Citywide land use and service delivery plans;
3. Expand public participation by creating an open and systematic planning process in which communities are fully informed, early in the process, of the City’s specific criteria for determining the need for a facility and its proposed location, the consequences of not taking the proposed action, and the alternatives for satisfying the identified need;
4. Foster consensus building to avoid undue delay or conflict in siting facilities providing essential City services;
5. Plan for the fair distribution among communities of facilities providing local or neighborhood services in accordance with relative needs among communities for those services;
6. Lessen disparities among communities in the level of responsibility each bears for facilities serving Citywide or regional needs;
7. Preserve the social fabric of the City’s diverse neighborhoods by avoiding undue concentrations of institutional uses in residential areas; and,
8. Promote government accountability by fully considering all potential negative effects, mitigating them as much as possible and monitoring neighborhood impacts of facilities once they are built.<sup>3</sup>

Taken as a whole, these goals set the framework for dialogue between communities and government in an effort to achieve optimal levels of efficiency, utility, and fairness in the siting of public facilities. The Fair Share Criteria were developed as a way to provide communities with a transparent decision-making process that facilitates adequate planning and takes communities’ needs into account. The Criteria were intentionally designed to balance community needs through an open planning process rather than requiring communities to follow a rigid formula. The emphasis was on shaping the siting process, not the outcome.

<sup>1</sup> New York City Charter. Section 203.

<sup>2</sup> New York City Charter. Section 201.

<sup>3</sup> New York City Department of City Planning. *Fair Share: An Assessment of New York City’s Facility Siting Process: A Report to the Mayor and the City Planning Commission*. Spring 1995.



## **OBJECTIVE OF STUDY:**

While the Criteria apply to many different types of facilities located throughout the City, this study represents an analysis of Fair Share across the City's homeless shelter system. As stated in goal #3, transparency in decision-making is a cornerstone of implementing the Criteria. Thus, the objective of this study is to determine if the City's goal of transparency is being effectively achieved by implementation of the Fair Share Criteria. This study looks specifically at how Tier II (family) and adult shelters operated or contracted by the New York City Department of Homeless Services (DHS) are located through the Fair Share process.<sup>4</sup>

We seek to address the following research questions:

➔ *Is the goal of early and open public consultation being achieved in the Fair Share process?*

➔ *Is there a consistent level of transparency in siting different types of homeless shelters, specifically shelters that are operated directly by City agencies versus contracted facilities?*

➔ *Is adequate oversight and reporting of Fair Share in place?*

We assess these research objectives and discuss their implications for transparent decision-making to determine if the City is achieving an open and systematic planning process. The research includes a spatial analysis of homeless family and adult shelters across New York City in order to determine if geographic patterns exist in the distribution of shelters Citywide. The purpose of the spatial analysis is to inform the reader of the number and location of such facilities. This analysis is followed by an overview of the Fair Share process as it applies to different types of homeless shelters and defines key terminology. The research process for this study included a review of materials from the City Charter, City agencies, community boards, contracts, and documents obtained via Freedom of Information Law (FOIL) requests. The goal of this research is ultimately to determine if shelter siting is being conducted in a transparent manner consistent with its intended goals and to determine if there is a consistent level of transparency across different types of shelters.

## **THE NEW YORK CITY SHELTER SYSTEM IN CONTEXT: A SPATIAL ANALYSIS**

In this report, we examine transparency in the siting process. We believe that understanding patterns in siting shelters strengthens the City's planning process and underscores the vital role of public involvement in decision-making. Our research, therefore, includes a geographic analysis of homeless family and adult shelters to provide the public with information about the number and location of facilities across New York City. This report is an analysis of the Fair Share Criteria in the context of the City's shelter system, but does not comment on DHS policy<sup>5</sup> or the placement of individual shelters.

Using data compiled from the Department of City Planning (DCP), the U.S. Census Bureau, the U.S. Bureau of Labor Statistics, DHS, and other sources, this analysis represents an independent study of family and adult homeless shelters to examine if geographic patterns exist. We conducted this analysis by posing the following research questions and analyzed the distribution of shelters to determine if trends or patterns emerged.

➔ *What is the distribution of homeless shelters across New York City?*

<sup>4</sup> DHS offers temporary housing assistance to three different homeless populations: single adults, family shelters (also known as "Tier II shelters"), and street homelessness. (Street homelessness is a term that the agency uses to describe individuals living unsheltered on the streets or in other public places and is out of the scope of this report.)

<sup>5</sup> DHS policy requires shelter residents to be placed in their borough of origin (DHS Commissioner Seth Diamond, City Council Testimony, General Welfare Committee Hearing on Oversight: DHS's Procedures for Locating Transitional Housing for the Homeless, June 2010).

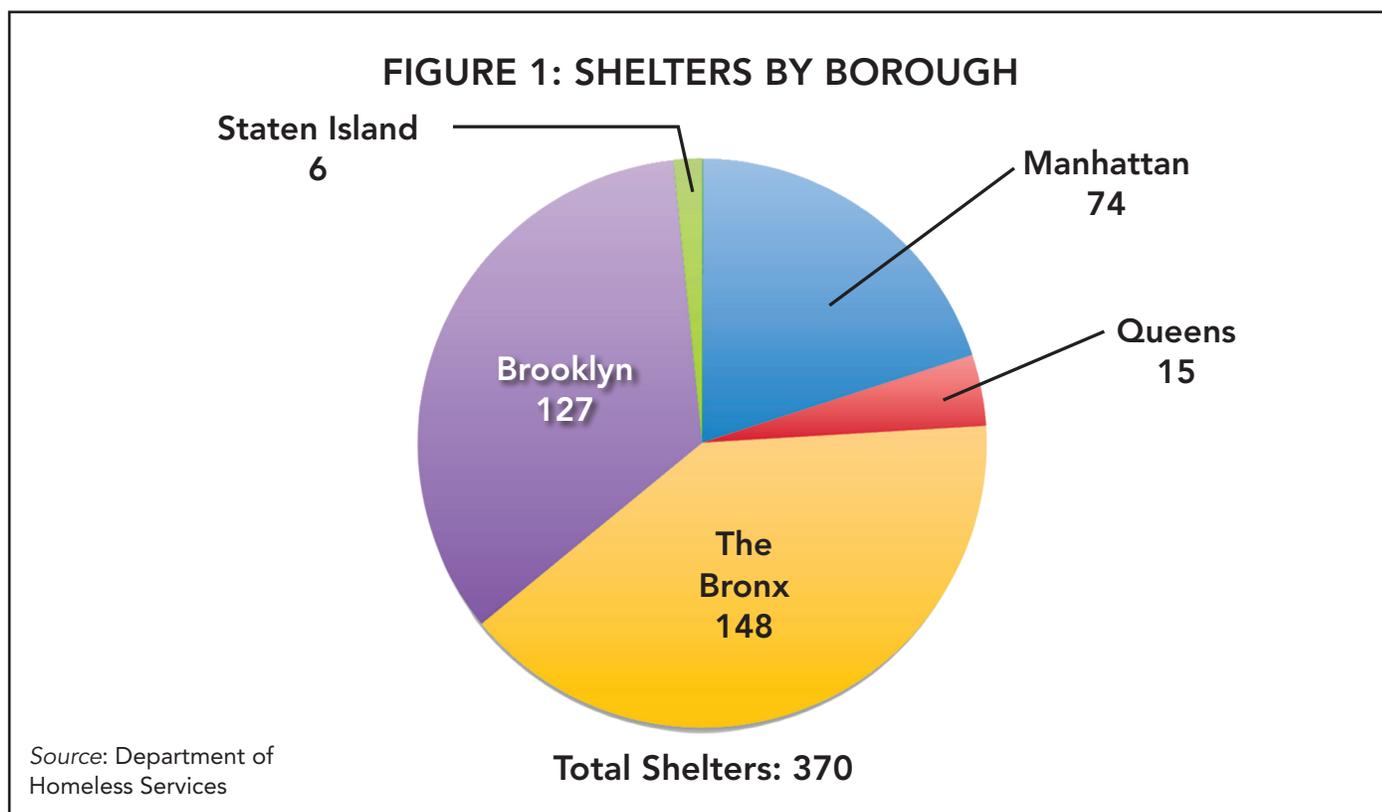


➔ *Is there a geographic pattern in the distribution of shelters across Community Districts?*

A borough-level analysis shows that family and adult homeless shelters are unevenly dispersed across the City; the greatest numbers of shelters are in the Bronx, followed by Brooklyn, Manhattan, and Queens. Staten Island was omitted from this analysis because the relative scarcity of shelters (six in total) made the borough an outlier whose inclusion skewed Citywide results.

Note: while capacity is an important factor to take into consideration when analyzing the distribution of City shelters, the number of beds per shelter was not available for this study.

To better understand the geography of shelter siting, we broke our analysis down further to examine the distribution of shelters at the Community District level. Note this analysis was done with 2011 data.



The next analysis maps the location of family and adult shelters across the City and across income levels.

Figure 2 confirms that homeless shelters are clustered in certain areas of the City, primarily in low income neighborhoods. There are differing perspectives about the distribution of shelters.

Some advocates support locating shelters in residents' home neighborhoods to maintain support systems and to keep students in their own schools. This approach is consistent with DHS' policy of placing residents in their borough of origin.<sup>6</sup> Others are concerned that clustering shelters in low-income neighborhoods contributes to a cycle of poverty, i.e. placing shelters in communities with limited access to public transit, medical facilities, employment opportunities, and other services. In addition, low-income communities are the least able and likely to provide input on the siting process.

Regardless of neighborhood, we believe that all communities have the right to participate in an open and inclusive planning process and that transparency yields the best results.

<sup>6</sup> DHS Commissioner Seth Diamond, City Council Testimony, General Welfare Committee Hearing on Oversight: DHS's Procedures for Locating Transitional Housing for the Homeless, June 2010.

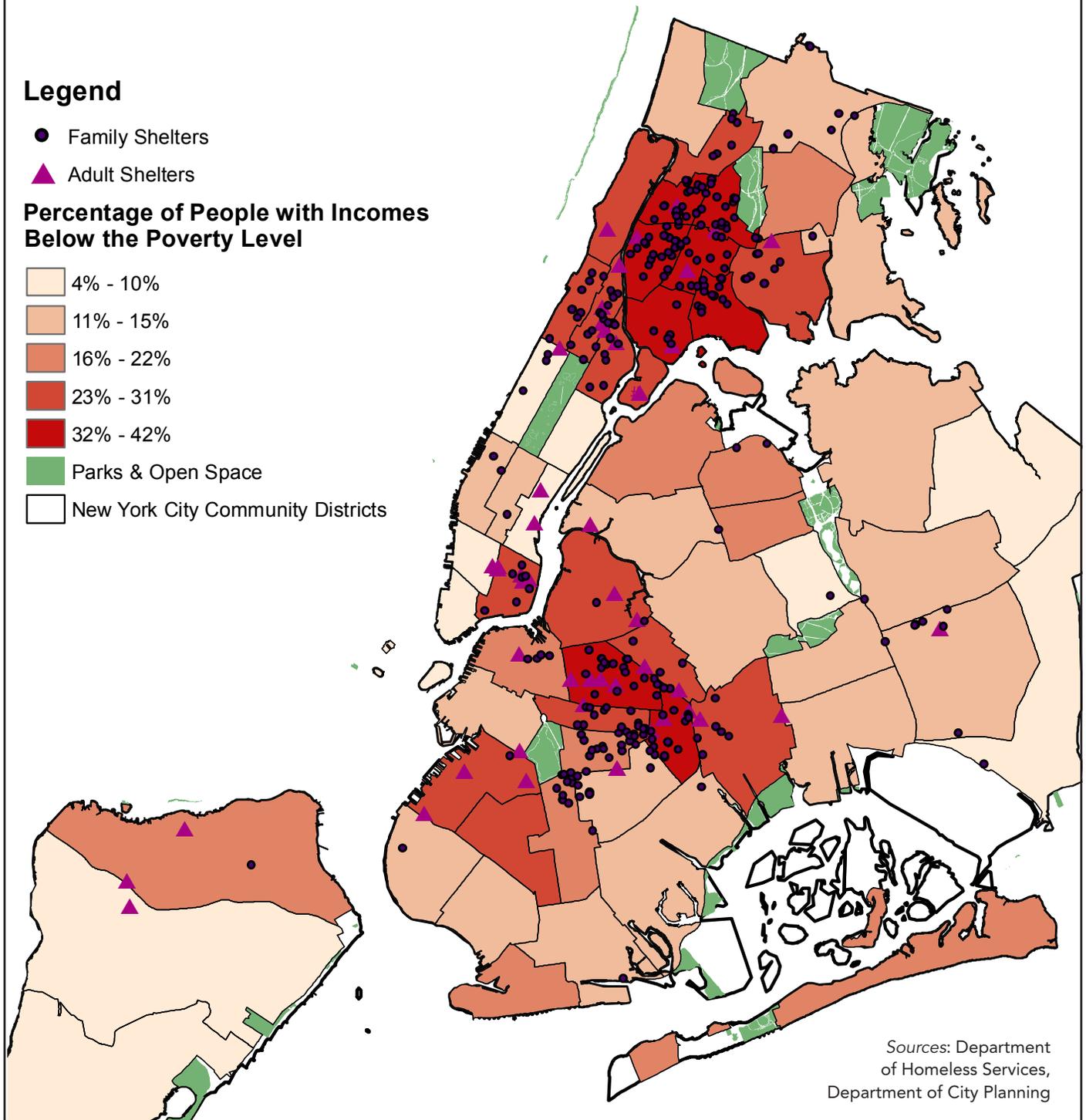
### DISTRIBUTION OF HOMELESS SHELTERS AND POVERTY RATES PER BOROUGH AND COMMUNITY DISTRICT

#### Legend

- Family Shelters
- ▲ Adult Shelters

#### Percentage of People with Incomes Below the Poverty Level

- 4% - 10%
- 11% - 15%
- 16% - 22%
- 23% - 31%
- 32% - 42%
- Parks & Open Space
- New York City Community Districts



Sources: Department of Homeless Services, Department of City Planning

**Income Distribution Analysis**

The study also included a socioeconomic analysis examining 14 of the City's 59 Community Districts with the greatest number of shelters. Specifically, we analyzed median household income to determine if there were patterns between the 14 Community Districts' socioeconomic status and shelter density.

**TABLE A: SELECTED COMMUNITY DISTRICTS' SHELTER DISTRIBUTION AND MEDIAN HOUSEHOLD INCOME**

Number of Shelters	Neighborhood	Median Household Income	Borough/Community District
<b>BRONX</b>			
19	Hunts Point, Longwood	\$19,982	2
11	Crotona Park, Claremont	\$21,862	3
31	Concourse	\$26,516	4
22	Fordham, Morris Heights	\$25,459	5
23	Belmont, East Tremont	\$21,862	6
9	Eastchester, Woodlawn	\$46,304	12
<b>BROOKLYN</b>			
25	Bedford-Stuyvesant	\$31,945	3
17	Crown Heights, Prospect Heights	\$38,325	8
18	Prospect Lefferts Gardens	\$38,168	9
19	Brownsville	\$26,802	16
<b>MANHATTAN</b>			
15	Chinatown, Lower East Side	\$38,077	3
22	Central Harlem	\$31,812	10
15	East Harlem	\$30,491	11
<b>QUEENS</b>			
7	Jamaica, Hollis	\$51,353	12

Source: Department of City Planning, Department of Homeless Services, U.S. Census Bureau

Many of the Community Districts in Table A have poverty levels above 25 percent. These districts represent 70 percent of New York City's highest poverty levels. This finding is mirrored by similar findings in terms of individuals' poverty levels as well as family poverty levels.<sup>7</sup>

<sup>7</sup> New York City Department of City Planning, *Community District Profiles*, 2010; New York City Department of Homeless Services, *Adult and Family Shelters*, 2011.



As of 2010, the unemployment rates of these Community Districts in Table A averaged 12.12 percent, nearly five percent higher than Community Districts without homeless shelters and nearly double the Citywide unemployment rate of 6.55 percent.<sup>8</sup>

The next phase of our research explores the integrity of the Fair Share process regarding transparency and public consultation related to siting City shelters. This discussion begins with a definition of key terms and includes an analysis of different types of City shelters to determine whether the City pursues a transparent siting process. This study takes the analysis one step further by comparing the level of transparency across different types of City shelters and corresponding decision-making processes as outlined in the Fair Share Criteria.

## **BACKGROUND & DEFINITION OF TERMS**

### **UNDERSTANDING THE CRITERIA**

The Fair Share Criteria consist of “a set of guidelines that require agencies to inform and consult with affected communities early in the planning process, and to consider, and balance, concerns of equity and efficiency.”<sup>9</sup> The Criteria are not quantitative formulas and do not have a formula for measuring fairness; rather, fairness is defined as “the outcome of sound procedures for deciding where facilities are sited.”<sup>10</sup>

The Criteria cover many facets of the siting process. This study addresses Criteria 4.2, procedures for consultation:

“An underlying premise of the Fair Share Criteria is that the factors affecting Fair Share can be weighed more effectively, and siting decisions accepted more regularly, when communities have been informed and consulted through the siting process.”

### **DEFINITION OF FACILITIES APPLICABLE TO THE FAIR SHARE CRITERIA**

The Charter outlines the different types of facilities subject to the Fair Share Criteria and corresponding decision-making procedures. A City facility is defined under the Charter as “a facility used or occupied to meet City needs that is located on real property owned or leased by the City or is operated by the City or pursuant to a written agreement on behalf of the City.”

City rules further refine the definition of a City facility as follows:<sup>11</sup>

1. A facility providing City services whose location, expansion, closing, or reduction in size is subject to control and supervision by a City agency, and which is:
  - i. Operated by the City on property owned or leased by the City which is greater than 750 square feet in total floor area; or,
  - ii. Used primarily for a program or programs operated pursuant to a written agreement on behalf of the City and derives at least 50 percent and at least \$50,000 of its annual funding from the City.

The criteria do not apply to private, state, and federal facilities or public authorities, though City agencies and the CPC will take the number and placement of such facilities into consideration when deciding where to place City facilities. Contract or lease renewals that do not significantly affect the use, size, or capacity of a facility are also not applicable.

<sup>8</sup> New York City Department of City Planning, *Community District Profiles*, 2010; New York City Department of Homeless Services, *Adult and Family Shelters*, 2011.

<sup>9</sup> New York City Department of City Planning. *Fair Share: An Assessment of New York City's Facility Siting Process; A Report to the Mayor and the City Planning Commission*. Spring 1995. Page 3.

<sup>10</sup> *Ibid.*

<sup>11</sup> The Rules of the City of New York. *Criteria for the location of City Facilities*, Article 3 of Appendix A to Title 62.



There is also a set of shelters discussed later in this report known as “per diem” facilities which are classified as non-contractual shelters according to the Department of Homeless Services. The agency asserts such facilities are not subject to Fair Share as they do not correspond with criteria (i) or (ii) contained within the definition of a City facility as listed on page 6. While we do not have the level of detail available to provide a breakdown by type of facility, transitional residences consist of conditional housing that includes hotels, cluster site apartments, tier II facilities, and adult family shelters.<sup>12</sup>

## **POLICIES AND PROCEDURES IN NEW YORK CITY’S SHELTER SITING PROCESS**

New York City’s decision-making process for siting shelters occurs through three mechanisms: Uniform Land Use Review Procedure (ULURP), the City’s procurement process, and per diem (non-contracted) arrangements. Each mechanism is discussed in detail in this report, and is accompanied by a series of flowcharts that visually present the steps taken as part of each process, with an emphasis on the public review requirements.

As the majority of DHS facilities are *not* sited through ULURP, there is an increasing prevalence of contracted facilities. Details regarding both sets of facilities are to be published in the City’s annual Statement of Needs.

### **Annual Statement of Needs**

Section 204 of the City Charter requires the City to produce an annual Statement of Needs. This Statement is described as “the earliest formal disclosure of the City’s plans to site new facilities or substantially change them.”<sup>13</sup> The Statement “contains proposals for which ULURP applications or contract approvals are anticipated” during the relevant fiscal year.<sup>14</sup>

The Statement is published by the mayor each fall. It identifies facilities by agency and program that the City will site, close, expand, or otherwise modify over the next two fiscal years. Each description includes the facilities’: public purpose to be served; size; nature; location by borough, and if practicable, community district(s) and the applicable criteria used in location decision-making.

The Statement is based in part on the annual needs assessment that each agency provides to the mayor. Agency needs assessments are based on annual reviews and budget priorities put together by each community board.<sup>15</sup> Each community board is responsible for reviewing and providing comments on the annual Statement and is encouraged to hold a public hearing.

In recent years, DHS shelters have not been included in the Statement. Certain shelters are exempt from the Statement, such as emergency shelters, which are not anticipated, and per diem shelters, which are not City facilities. It is unclear if there are additional explanations. And while the Statement of Needs provides very basic siting criteria, the lack of detail offers little guidance for agencies or vendors to assist with siting decisions.

<sup>12</sup> City of New York Office of the Comptroller, Bureau of Financial Audit. Audit Report on the Compliance of the Department of Homeless Services with City Procurement Rules and Controls Over Payments To Non-Contracted Providers. March 2010. These terms are further defined in the glossary.

<sup>13</sup> New York City Department of City Planning. *Fair Share: An Assessment of New York City’s Facility Siting Process; A Report to the Mayor and the City Planning Commission*. Spring 1995.

<sup>14</sup> City of New York. *New York City Citywide Statement of Needs*. Fiscal Years 2012 and 2013. Page 3.

<sup>15</sup> New York City Charter. Section 204e.



## **PROCESS FOR SITING SHELTERS DIRECTLY OPERATED BY DHS: ULURP**

ULURP is New York City's formal public review process for making land use decisions.<sup>16</sup> The purpose of ULURP is to "establish a standardized procedure whereby applications affecting the land use of the City would be publicly reviewed." This process includes mandated timeframes within which application review must take place.<sup>17</sup> Facilities subject to ULURP include applications for site selection and the acquisition of public facilities.<sup>18</sup> These facilities require a Fair Share analysis. ULURP is discussed further within this study.

Of the 202 facilities analyzed in the 1995 DCP assessment, approximately 20 percent (38) were subject to ULURP.<sup>19</sup> 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."<sup>20</sup> As a result, there were no public hearing materials available with respect to ULURP.

16 New York City Charter. Section 197c.

17 New York City Department of City Planning website. <http://www.nyc.gov/html/dcp/html/luproc/ulpro.shtml>, accessed October 2011.

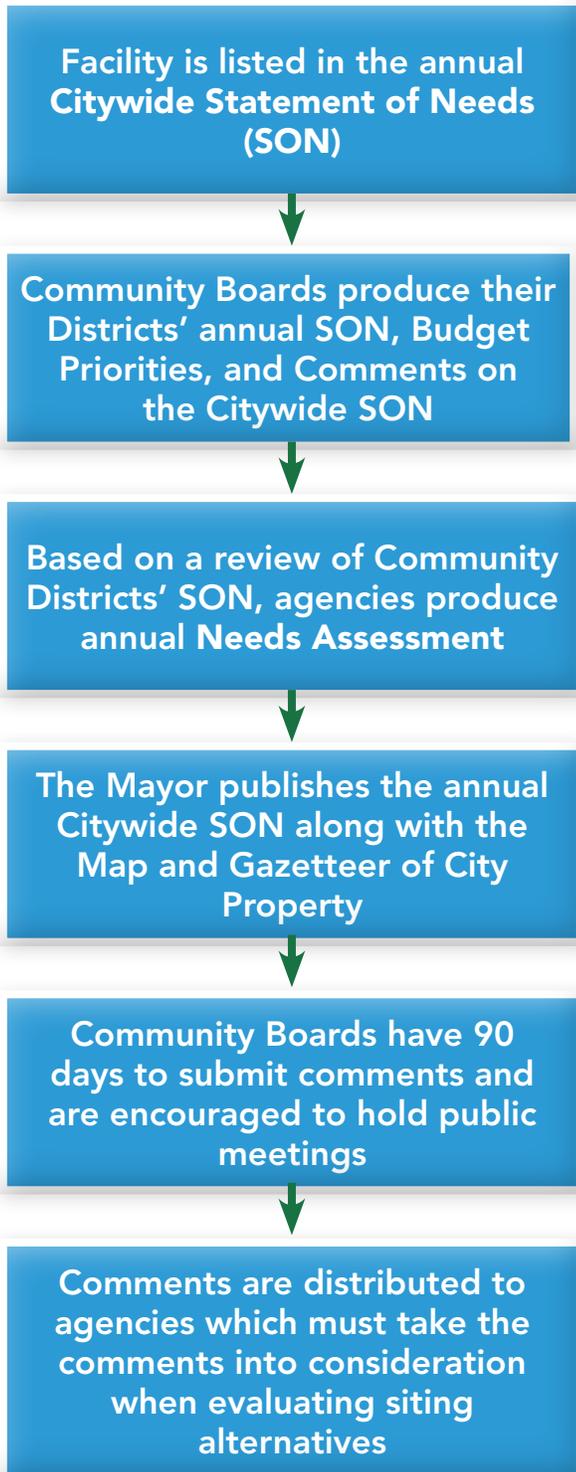
18 New York City Department of City Planning. *Uniform Land Use Review Process*. Form GI0505w.

19 New York City Department of City Planning. *Fair Share: An Assessment of New York City's Facility Siting Process; A Report to the Mayor and the City Planning Commission*. Spring 1995. p. 2.

20 New York City Comptroller's Office FOIL Request #11-335-DCP 2011; New York City Department of Homeless Services. Adult and Family Shelters.



**FIGURE 3: CITYWIDE SITE PLANNING PROCESS\***



**FIGURE 4: ULURP PROCESS FOR SITING FACILITIES DIRECTLY OPERATED BY CITY AGENCIES\***



Sources: New York City Charter Section 203, New York City Department of City Planning's *Fair Share Criteria: A Guide for City Agencies* (1998), New York City Citywide Statement of Needs

\*While the Statement of Needs and ULURP are separate processes, City facilities must go through both as part of the siting process.



## **PROCUREMENT METHODS FOR CONTRACTED HOMELESS SHELTERS**

The siting of a City facility not subject to ULURP is subject to 'Article 9' of the Fair Share Criteria. This includes facilities "such as contracts with private providers that establish City facilities,"<sup>21</sup> which are required to submit a written "Article 9" statement to the mayor. This statement describes the agency's consideration and application of the relevant Fair Share Criteria, including direct notification and consultation with the affected community. Copies of the 'Article 9 Statement' are sent to the affected community board(s), borough president, and the Department of City Planning. Article 9 analyses were acquired for this study from DCP and DHS through FOIL requests. The discussion below describes the City's procurement process with regard to shelters.

### **An Overview of the City's Procurement Process**

According to the New York City Charter, the City is required to provide housing to all homeless adults and families in need.<sup>22</sup> Generally, when a City agency wishes to procure any services, goods, or construction which would be paid for with City funds, that City agency must comply with the procurement laws and rules set forth in the New York City Charter and the Rules of the City of New York. Chapter 13 of the Charter and Title 9 of the Procurement Policy Board (PPB) Rules dictate the requirements of City procurements.

The PPB Rules state that certain types of services must be procured through the Competitive Sealed Proposal (CSP) method of procurement. By using CSP, a City agency may utilize more than just price as the selection criteria in making an award of a contract. Selection criteria may include, but not be limited to, the proposed approach that the proposer intends to use, the relevant experience that the proposer has in providing the solicited services, and the organizational capacity of the proposer. These selection criteria, along with a description of the services sought and other relevant information, is contained in the solicitation document called the Request for Proposal (RFP).

The primary disadvantage to using the CSP method of procurement is the amount of time it takes from start to finish. Generally, it takes anywhere from 18 to 24 months to award a contract from an RFP. Many things factor into the long timeframes incumbent with the CSP method of procurement. First, the use of the CSP as the method of procurement, along with the draft of the RFP, must be approved by the Mayor's Office of Contract Services (MOCS). Depending on the complexity of the services provided and the criteria on which the agency wishes to evaluate proposals, review and approval of the RFP document could take months. Once approved, the RFP must be made available to the public for at least 20 days (and usually longer for more complicated RFPs). Once proposals are submitted, it can sometimes take months just for an evaluation committee to read all the proposals, evaluate them, and select a winning vendor. Then the contract needs to be negotiated and the award must be approved by MOCS. All this can take months to accomplish.

For certain types of services, a procurement conducted over a limited timeframe may not adequately address the need for certain services. The PPB Rules allow for the use of an Open-Ended RFP (OERFP). While still classified as a CSP method of procurement, the Open-Ended RFP is an ongoing solicitation that has no end date. Proposals may be submitted at any time, and awards are made on a rolling basis rather than at a set time. This allows agencies to address ongoing needs or concerns without having to reissue a new RFP every time a need arises. The OERFP process is used for services where the requirements and qualifications are unusually complex and difficult to predict and are, therefore, appropriate for shelter siting.<sup>23</sup>

The Charter and PPB Rules also allow agencies to do expedited procurements in the event of an emergency. An emergency condition is defined in the PPB rules as "an unforeseen danger to life, safety, property, or a necessary

21 New York City Department of City Planning. "Fair Share" Criteria: A Guide for City Agencies. Revised Spring 1998. Page 6.

22 DHS' mission is to provide short-term, emergency shelter for individuals and families who have no other housing options available (DHS website, homepage). New York City's Right to Shelter policy stems from the 1979 lawsuit Callahan v. Carey and the Legal Right to Shelter and is based on the New York State Constitution.

23 New York City Procurement Policy Board Rules. Section 3-03 (b) (2).



service.”<sup>24</sup> These emergency procurements do not require solicitation documents, notices, or other procedural requisites that are generally required for other procurements. Under an emergency procurement, the City Agency must make a formal declaration that an emergency exists. The Comptroller’s Office and the Corporation Counsel must agree that the emergency is real, and it is with their approval that the City agency may use the emergency procurement method.

### **Procurement of City Shelters**

In 2000, DHS issued an Open-Ended RFP for homeless shelters and has been accepting responses ever since (the most recent addendum to the Open-Ended RFP, Addendum No. 10, was issued in September 2010). Beginning in 2008, DHS noticed a rise in the number of homeless single adults seeking shelter despite a nearly 23 percent decline in the daily census numbers over the past five fiscal years. In 2010, DHS declared that this increase was an emergency that required the agency to begin using the Emergency Procurement method because traditional methods of procurement would not be able to address the need.

Emergency procurements are only meant to address the emergency and are not intended to replace the preferred methods of procurement for the goods and services that are required. Also, the term of the contracts procured via an emergency procurement are only supposed to last as long as the emergency dictates, and are not meant to be permanent. This is the dilemma DHS faces with its shelter contracts.

### **Shelter Procurement and Fair Share**

A City facility sited through a CSP contract must undergo a Fair Share analysis.<sup>25</sup> City rules also require submitted proposals to describe how the Fair Share Criteria will be incorporated into the procurement process. In 2009, DHS revised its Opened-Ended Request for Proposals procedures. The purpose was to revise community board notification requirements. Under these revisions, applicants need to submit written notification to affected community boards of their intent to operate a homeless shelter *prior* to submitting an application to DHS. This included a detailed summary and scope of services. Prior to a contracts public hearing, the vendor must submit an Article 9 Statement to the mayor’s Office.

Shelters developed under an emergency declaration are not required to follow the City’s standard public involvement process nor do the PPB rules require a Fair Share analysis.<sup>26</sup> The siting process is expedited in such cases to meet immediate and unforeseen emergency needs. DHS has produced internal guidelines to expedite the procurement and decision-making process in siting shelters to meet an emergency need; thus, emergency shelters are established prior to the finalization of the contract with the shelter provider. Under these guidelines, DHS “assesses the capacity of proposed facilities, among other factors.”<sup>27</sup>

While the OERFP states that contract awards are subject to the City’s Fair Share Criteria, the RFP provides minimal guidance to the vendor on how or where to site a shelter. It simply discusses capacity requirements and provides for the collection of information on the location of a site, but offers little guidance on what types of geographic attributes are desirable to the agency. Because the bulk of guidance on siting lies directly in the Fair Share Criteria, which goes into great detail, siting preferences and decisions are left up to the discretion of the vendor.

<sup>24</sup> New York City Procurement Policy Board Rules. Section 3-06 (e).

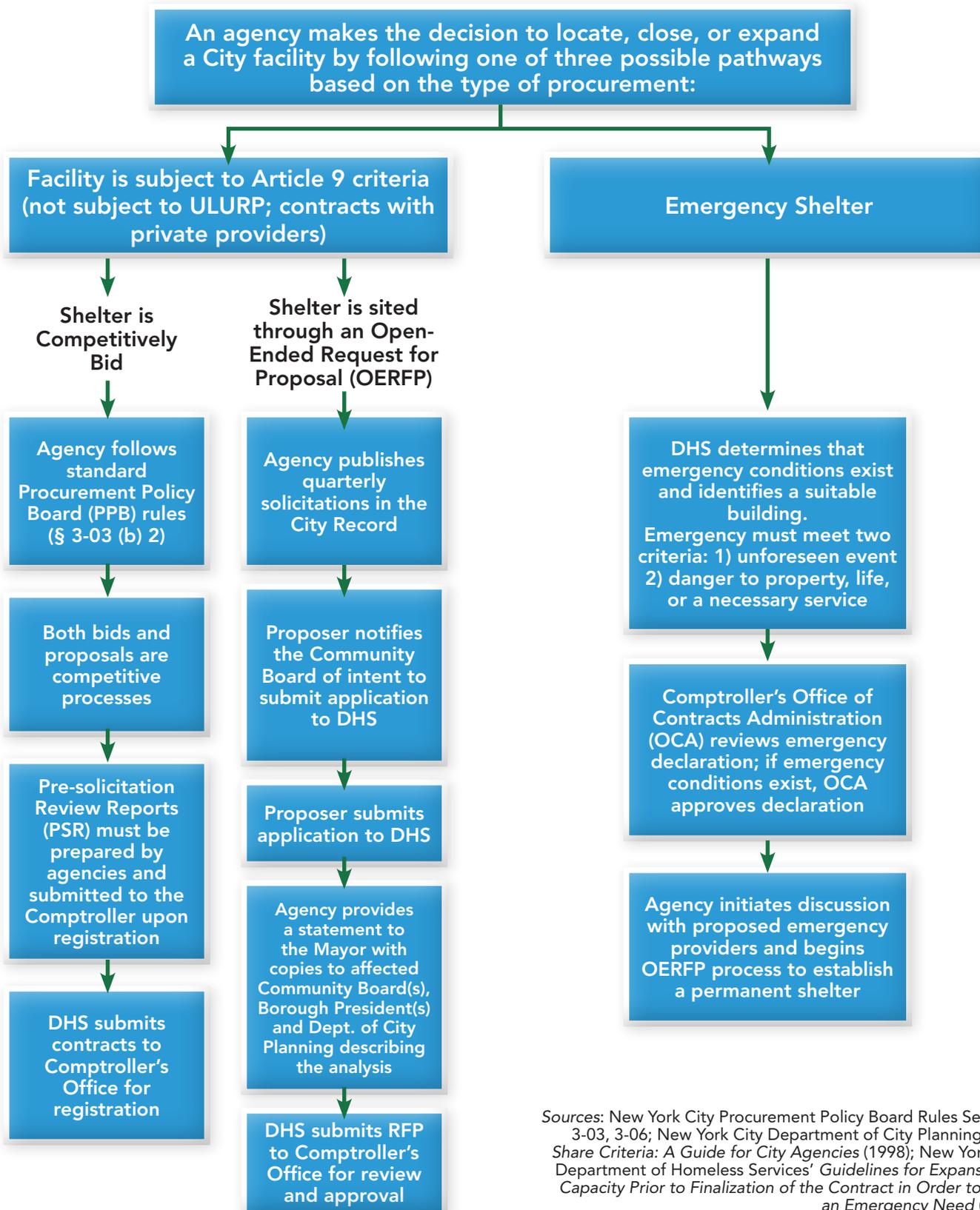
<sup>25</sup> New York City Mayor’s Office. *Memorandum to Agency Chief Contracting Officers, Rules Implementation Memorandum #7*. 1993.

<sup>26</sup> New York City Procurement Policy Board Rules. Section 3-06.

<sup>27</sup> New York City Department of Homeless Services. *Guidelines for Expansion of Capacity Prior to Finalization of the Contract in Order to Meet an Emergency Need*. 2009.



**FIGURE 5: PROCESS FOR SITING CONTRACTED CITY FACILITIES**



Sources: New York City Procurement Policy Board Rules Sections 3-03, 3-06; New York City Department of City Planning's *Fair Share Criteria: A Guide for City Agencies* (1998); New York City Department of Homeless Services' *Guidelines for Expansion of Capacity Prior to Finalization of the Contract in Order to Meet an Emergency Need* (2009)

## NON-CONTRACTED SHELTERS

- Shelters Operated on Per Diem Arrangements

In some cases, DHS pays shelters to provide services on a per diem basis for non-contracted providers. There is neither a lease nor a written agreement in place between the City and the landlord for these types of shelters, and no contractual relationship exists. The building owner is under no obligation to accept or reserve space for homeless applicants. Unlike contracted facilities, which are required to hold public hearings, these per diem facilities do not go through ULURP and community board notification is a courtesy, not a requirement.

As per diem shelters do not have contracts, they are not reviewed by the Comptroller’s Office of Contracts Administration; therefore, a detailed analysis of per diem shelters is not included in this report. Moreover, these shelters are not applicable to the discussion of public consultation as they fall outside the scope of the City’s public review process. An audit by the Comptroller’s Office also found DHS to be improperly using Purchase Orders to process payments for these providers.<sup>28</sup>

The Comptroller’s Office is currently challenging the validity of these arrangements in court, citing failure of DHS to follow the City’s procurement policies and bypassing ULURP and Fair Share requirements.<sup>29</sup> DHS claims such arrangements are legal because, among other things, the provision of temporary shelter is not a “service.”

## FACILITIES THAT BYPASS FAIR SHARE

### Non-City Shelters

**FIGURE 6: PER DIEM SHELTERS**

An agency makes the decision to locate, close, or expand a city facility without going through the City’s procurement process



Shelters operated on a per diem arrangement without a written contract



Per Diem facilities are not considered City facilities and bypass ULURP, Article 9, or the Fair Share analysis.

**FIGURE 7: NON-CITY SHELTERS**

Private facilities are exempt from ULURP and the Fair Share Criteria

Facilities operated by the Federal government, State government, or Public Authorities

Sources: New York City Department of City Planning’s *Fair Share Criteria: A Guide for City Agencies* (1998); City of New York Office of the Comptroller, Bureau of Financial Audit. *Audit Report on the Compliance of the Department of Homeless Services with City Procurement Rules and Controls Over Payments To Non-Contracted Providers*. (March 2010).

<sup>28</sup> City of New York Office of the Comptroller, Bureau of Financial Audit. *Audit Report on the Compliance of the Department of Homeless Services with City Procurement Rules and Controls Over Payments To Non-Contracted Providers*. March 2010.

<sup>29</sup> New York State Supreme Court Appellate Division, First Department, “*In the Matter of the Westchester Square/Zerega Improvement Organization, Inc., John Bonizio, Sandi Kusk, Hannah Acampora, and John Liu, Comptroller of the City of NY, against Seth Diamond, Commissioner of the New York City Department of Homeless Services, the City of NY, Saints Tower LLC, & ‘John Doe,’ ‘Jane Doe,’ Article 78.*” Index #260573. 2009. Bronx County Clerk.



## ANALYSIS OF RESEARCH OBJECTIVES AND PROPOSED RECOMMENDATIONS

### RESEARCH OBJECTIVE #1:

→ *Is the goal of early and open public consultation being achieved in the Fair Share process?*

### CONCLUSION:

Access to information can be strengthened by providing greater accessibility to public information and public consultation earlier in the process.

### RESEARCH CRITERIA:

We addressed this question by analyzing the usefulness and accessibility of public resources associated with Fair Share analyses: Statement of Needs, Atlas and Gazetteer of City Property, and Article 9 analyses.

### FINDINGS, IMPACT, AND ANALYSIS:

The Statement of Needs is critical to achieving the goal of early and open public consultation because it is the public's first opportunity to review City facilities to be sited. It is designed "to encourage early consultation with communities."<sup>30</sup> Additionally, it is a vital piece of communication between the City and the public because it incorporates Community Districts' needs assessments into the siting process.

As mandated in City Charter section §204, the mayor's office is required to submit to the City Council, borough presidents, borough boards, and community boards a "Citywide statement of needs concerning City facilities prepared in accordance with the criteria established in section two hundred three."<sup>31</sup> Concerning the siting of facilities, the City is instructed to describe for each proposed facility "(1) the public purpose to be served thereby, (2) the size and nature of the facility, (3) the proposed location by borough and, if practicable, by community district or group of community districts..." among additional criteria.

The importance of the Statement of Needs is underscored throughout the siting process. In the planning phase, service providers submitting proposals to RFPs must include consideration of any "written statements or comments submitted by borough presidents and community boards in response to the statement of needs."<sup>32</sup>

To assess this analysis, we submitted a FOIL request to DCP for all comments made on the Statement by borough presidents and community boards spanning fiscal years 2011-2013 as well as a FOIL request to DHS for Article 9 Statements to the mayor for all contracted transitional facilities for the years 2006 through 2011.

### The Definition of a City Facility limits the public's access to information

It is difficult for the public to readily determine if a contracted shelter meets the criteria for a City facility as neither the City's Fair Share Guidelines nor Article 9 analyses provide the public with clear guidelines. While the definition of a City facility is clearly defined in the Charter, it is often difficult to discern whether an individual facility meets the specifications to be designated a City shelter.

<sup>30</sup> New York City Department of City Planning. *Fair Share: An Assessment of New York City's Facility Siting Process; A Report to the Mayor and the City Planning Commission*. Spring 1995.

<sup>31</sup> New York City Department of City Planning. "Fair Share" Criteria: A Guide for City Agencies. Revised, Spring 1998.

<sup>32</sup> New York City Charter. Section 204 (g) (3).



**Article 9 shelters are not included in the Statement of Needs, limiting public access and transparency.**

Shelters requiring an Article 9 analysis are not published in the annual Statement of Needs, therefore excluding the vast majority of DHS homeless shelters from this vital planning resource. This finding is demonstrated by Table B below, and significantly limits the public’s ability to make informed decisions and provide input into the process.

**The Statement of Needs does not reflect the scope of shelters across the City**

The Statement of Needs contains “proposals for which ULURP or Section 195 applications or contract approvals are anticipated” during the applicable fiscal year.<sup>33</sup> However, it is not clear which contracted facilities are subject to ULURP and should be listed in the Statement. While this information is available in the City’s contract database system, this would be a resource-intensive process and may not be easily accessible to the public.

This results in each Statement of Need listing very few facilities and only a small number of the City’s shelters, as demonstrated by the three-year breakdown in the table below:

**TABLE B: BREAKDOWN OF FACILITIES LISTED IN THE STATEMENT OF NEED FOR THE PAST 4 YEARS**

	# of Facilities	# of Shelters	# of Community Districts identified
2012-2013	32	0	16
2011-2012	13	0	6
2010-2011	19	*1	8
2009-2010	17	2	11

\*Borough has not yet been identified

Sources: New York City Citywide Statement of Needs (2009-2013)

From our analysis of DHS contracts we found that there were approximately 20 shelters contracted through the City’s Open-Ended Request for Proposals process in 2010 and again in 2011, yet only one shelter was listed in the Statement during this same time period. We are, therefore, concerned that the Statement of Needs is not inclusive or representative of the majority of the City’s shelters. The limited scope of the Statement of Needs further limits the public’s ability to plan and make informed decisions for the good of the community as well as to balance Citywide needs.

**Article 9 statements are difficult to access**

Accessing Article 9 statements is challenging. A review of the Internet, community board, borough presidents, and DCP websites shows that there does not appear to be an online repository of Article 9 documents. It appears that these documents must be obtained directly from the agencies through a Freedom of Information Act request. This is time-consuming and burdensome for both the public and the Department of City Planning because this information is not readily available online and may require a FOIL request.

**Article 9 lacks mandated timeframes for review**

Article 9 is a single paragraph in the Fair Share Criteria. It is brief and somewhat vague, containing neither a timeframe for processing Article 9 facilities’ community notification prior to operating the facility nor a direct reference to public review. The 1998 Fair Share Guide states it is “generally advisable to submit Article 9 statements sooner rather than

33 City of New York. *New York City Citywide Statement of Needs*. Page 3. Fiscal Years 2012 and 2013.



later in the siting process.”<sup>34</sup> Article 9 proposers can wait until after an operating contract is processed and a facility ready to be occupied before submitting the statement.

### **The Statement of Needs is inadequate**

We found that the limited level of detail provided in the Statement of Needs restricts communities from providing meaningful review or substantive input. For example, as Table B shows, many of the facilities listed in the Statement do not specify which community district, or in some cases borough, shelters are proposed to be sited in. While the open-ended aspect of the siting process and the resulting ambiguity of future agency locations are noted, the Statement could more adequately define the locational parameters and necessities entailed by each project to give better guidance on the prospective site.

DHS has a policy of placing homeless individuals in their borough of origin in order to minimize disruption to their lives.<sup>35</sup> This underscores the importance of providing a community with specific information about the City’s homeless needs so that Boards are equipped to make informed and effective decisions.

In addition, the 1995 City Planning assessment found “insufficient detail on programs and potential sites in the statement of needs.” Fifteen years later, our observations confirm that the level of detail in the Statement of Needs remains inadequate. Fewer than half of community boards submitted comments on the original Statements because proposals were not site-specific and this remains a concern.

Additionally, we found that the lack of specificity in the Statement provides the City with criteria for possible sites needed for projects which can be interpreted inconsistently. The limited level of detail in the Statement allows room for the City to consider a broad range of project proposals with limited recourse.

Our review of borough presidents and community board comments on the Citywide Statement of Needs for Fiscal Years 2011-2012 showed that the lack of specificity of the Citywide Statement left community boards and borough presidents with relatively little information to consider and assess when making siting decisions. Additionally, their comments emphasize the need for open and early communication between agencies and affected communities. The lack of detail in the Statement limits respondents’ ability to provide meaningful comments in response to generalized information. This is further supported by evidence in the statements provided below.<sup>36</sup>

*“As I have noted in my response, I encourage the administration to be as specific as possible in the articulation of its goals in the formulation of its siting decisions.”*

— Brooklyn Borough President Marty Markowitz

*“As in previous years, the community members present found it difficult to comment either pro or con on the siting of new City facilities since the document was not site-specific. The attached document requests additional information on specific items within the Needs statement. We hope that this information can be provided in the near future for our review.”*

— Brooklyn Community Board 14 District Manager Doris Ortiz

*“Many of the items [identified in the Citywide Statement of Needs] do not identify a particular location for a proposed facility...”*

— Manhattan Borough President Scott M. Stringer

*“Citywide Statement of Needs for FY2011-2012 is vague and unclear, providing no specific information. Therefore, Community Board 10 does not approve this Statement of Needs as presented.”*

— Queens Community Board 10 Chairperson Elizabeth Braton

<sup>34</sup> New York City Department of City Planning. “Fair Share” Criteria: A Guide for City Agencies. Revised Spring 1998. Page 8.

<sup>35</sup> New York City Department of Homeless Services. Seth Diamond Testimony before the New York City Council General Welfare Committee: “Oversight: DHS’ Procedures for Locating Transitional Housing for the Homeless,” Interview by General Welfare Committee, City Council. June 2010.

<sup>36</sup> New York City Department of City Planning. Borough President and Community Board Comments on Citywide Statement of Needs. Fiscal Years 2011-2012 and 2012-2013.



### There is limited access to the *Map* and *Gazetteer*

The Statement of Needs is accompanied by a map and list of City-owned and leased properties, known as the *Atlas* and *Gazetteer of City Property*. The purpose of these documents is “to inform the public of existing patterns in municipal uses.”<sup>37</sup>

Access to these documents is critical to the understanding and implementation of the Fair Share Criteria. These documents are necessary to evaluate siting decisions and comprehensively assess the distributional impact of the facilities against the needs of the affected communities. Access to information is also a fundamental tenet of the Fair Share goal of open and early decision-making.

We found that both the *Map* and *Gazetteer* are difficult to obtain and contain limited information.

- \* The Citywide Statement of Needs references neither the *Map* nor the *Gazetteer* despite the fact that all three documents are discussed together in the Charter. This may limit public access to information.
- \* The *Map* itself consists of a series of eight physical, large-scale maps and is kept on file with the DCP and made available for public inspection and copying (according to the Charter) or for sale at the DCP Bookstore for \$35.

When our office contacted the DCP Bookstore to inquire about obtaining a copy of the *Map*, we were told by the store clerk that the public cannot make copies from the books and maps sold at the store. We were then put on hold and transferred several times. Moreover, we purchased the map of Brooklyn to find that only nine of the borough’s 18 community districts were on the map.

The *Map* is also impractical to use as its large-scale, physical format is difficult to reference for analysis. We also found that the maps can be difficult to interpret. The sample maps in the Fair Share Guide are illegible.

- \* The *Gazetteer* is found online in the Mayor’s Management Report (MMR), but this is not communicated on DCP’s Fair Share webpage, making the document challenging to locate.

Both the 1995 DCP evaluation of Fair Share and the 2011 City Council Oversight Hearing on Fair Share made references to the limited utility of maps and data. The 1995 DCP publication cited a lack of comprehensive, regularly updated inventories and maps of public facilities (City, state, federal, and non-profit) as a shortcoming. The Pratt Center for Community Development also made recommendations regarding updates to the Fair Share Guide and greater use of City datasets in the analysis.

### Per Diem Shelters lack transparency—DHS makes determinations with minimal to no public input

The per diem arrangement was a tool used by prior administrations to provide temporary housing for non-contracted shelters and to meet the City’s legal requirement of providing shelter to anyone in need. In addition to lacking any form of written agreement between the agency and landlord, per diem shelters often become de-facto long-term shelters. Moreover, the process for siting per diem shelters can result from relationships and negotiations directly between landlords and DHS, documented through internal capacity charts kept by the agency’s Facilities Management Department rather than through a public process.<sup>38</sup>

The per diem siting process takes place outside of the City’s regular contracting process because these are non-contracted shelters that are paid a daily rate by DHS and do not go through a competitive procurement process or community consultation. Such arrangements are, therefore, subject to potential fraud and backdoor deals that may not be in the public interest. Landlords also hold a great deal of power as they retain the right to accept or reject any resident they choose. Our concern is that private landlords determine the fate of potential shelter residents.

37 New York City Department of City Planning. *Fair Share: An Assessment of New York City’s Facility Siting Process; A Report to the Mayor and the City Planning Commission*. Spring 1995. Page 1.

38 Supreme Court of the State of New York, County of Bronx. “*The Westchester Square/Zarega Improvement Organization, Inc., John Bonizio, Sandi Lusk, Hannah Acampora, and John C. Liu, Comptroller of the City of New York, versus Seth Diamond, Commissioner of the New York City Department of Homeless Services, the City of New York, Saints Tower, LLC, and “John Doe” and “Jane Doe.”* Video-taped deposition of Robert V. Hess. New York, New York. Tuesday, July 17, 2012. Reported by Thomas R. Nichols, RPR. Job No. 26195.



While recognizing the need to maintain flexibility and respond to emergency conditions as well as the agency's commitment to converting these per diem arrangements to contracted status, the lack of transparency, accountability, and public input in this process is disturbing as is the high degree of discretion given to landlords who decide which residents to house or not, which, in turn, may negatively affect the outcomes for shelter residents.

### **Per Diem Shelters have questionable financial integrity**

Tracking the financial integrity and trail of these shelters is another concern. Until the spring of 2010, payments made to landlords with per diem arrangements were made from a separate DHS bank account rather than through the City's financial management system. While purchase orders for per diem shelters are now processed through New York City's Financial Management System, a major improvement for tracking the shelters' finances, accountability is still limited because the addresses that appear on the DHS purchase orders do not always correspond to the addresses of the facilities as many providers have shelters at multiple locations.

This made it difficult to run an analysis matching per diem shelters' purchase orders with contracts awarded either through an emergency procurement and OERFP process to see how frequently per diem shelters become permanent. Contracts awarded through the emergency procurement or OERFP process are given to the social service provider as opposed to the landlord. Per diems are given directly to the landlords.

Out of more than 150 family and adult shelters, almost half were non-contracted shelters and a third of the shelters had been in place for more than 10 years, going as far back as 1988.<sup>39</sup> While recognizing DHS's efforts to convert non-contracted shelters to contracted status, the reality is that there are still a significant number of shelters that have not been.

The flow of payments among landlords, providers, and DHS is also inconsistent and confusing. In some cases, DHS pays the provider directly, but the payment goes to the landlord. In other cases, the landlord pays the provider. The lack of documentation is also an issue of concern from a fiscal responsibility perspective, because per diem arrangements lack written standards.

## **RECOMMENDATIONS**

- 1.1 Provide clearer guidelines and more accessible information so the public can readily determine which non-ULURP facilities qualify as City facilities.**
- 1.2 Expand the scope of the Statement of Needs to include all Article 9 facilities.**
- 1.3 Provide a clearer definition of which contracts are listed in the Statement of Needs and expand the criteria to include a larger proportion of the City's shelters.**
- 1.4 Provide a greater level of detail in key public documents, including a clear definition of which contracts are listed in the Statement of Needs.**
- 1.5 Make Article 9 Statements readily available to the public.**

<sup>39</sup> New York City Department of Homeless Services. *Family and Adult Per Diem Shelter List*. July 2011.



- 1.6 Article 9 analyses should include a timeframe for processing applications and account for public review. Community boards should be notified of proposed Article 9 actions before the Statement is submitted.  
  
Implementing reasonable and consistent notification schedules to allow community boards and borough presidents adequate time to evaluate proposals and solicit community input will further meet the Fair Share Criteria's goal of an open and systematic planning process.
- 1.7 Provide greater transparency and access to public information that affects Fair Share decision-making, clearly communicating to the public where information is located and making information available in electronic format to the greatest extent possible.
- 1.10 The Mayor's Office of Contracts should make the revisions pertaining to Fair Share in the procurement forms referenced in the 1993 Memo to Agency Chief Contracting Officers.
- 1.11 Convert all Per Diem Shelters to contracted City facilities subject to community input.

## RESEARCH OBJECTIVE #2:

➔ *Is there a consistent level of transparency in siting different types of homeless shelters, specifically shelters that are operated directly by City agencies versus contracted facilities?*

### CONCLUSION:

Different types of City facilities subject to the Fair Share Criteria are affected by the Fair Share rules in different ways and have varying levels of public consultation and community involvement.

### RESEARCH CRITERIA:

The 1995 publication by the City Planning Department assessing the City's facility siting process breaks facilities into four groupings:

- New and Expanded Contract Facilities
- ULURP Site Selection Applications
- Section 195 Office Space Applications
- Facility Closing and Reductions

The 1995 publication by the City Planning Department identifies two forms of public disclosure and review procedures for these different types of facilities applicable to homeless shelters:

- ULURP applications for site selection, acquisition, or disposition
- Article 9 Statements to the mayor for actions not subject to ULURP or 195 (these include contracts with private providers)

The table below is a comparison of the public review requirements for homeless shelters sited and operated through each of the processes listed below:



**TABLE C: REVIEW REQUIREMENTS FOR NYC HOMELESS SHELTERS**

	ARTICLE 9	EMERGENCY SHELTERS	ULURP	PER DIEM (non-contracted)
<b>COMMUNITY REVIEW</b>	<ul style="list-style-type: none"> <li>• Applicants notify the community board of their intent to operate a homeless shelter before submitting an application to the agency (OERFP shelters)</li> <li>• DHS submits its Fair Share analysis to the mayor and sends a copy to community boards, borough presidents, and City Council members.</li> <li>• City Record quarterly notice of solicitation for the RFP</li> </ul>	<ul style="list-style-type: none"> <li>• PPB Rules do not require emergency solicitations to be published in the City Record.</li> <li>• PPB Rules do not require public involvement.</li> </ul>	<ul style="list-style-type: none"> <li>• The community board notifies the public and is required to hold a public hearing</li> <li>• Borough president may hold public hearing</li> <li>• City Planning Commission holds public hearing</li> <li>• City Council may hold public hearing</li> </ul>	None

*Sources: New York City Department of City Planning's Fair Share Criteria: A Guide for City Agencies (1998); New York City Procurement Policy Board Rules; New York City Department of City Planning's Land Use Review Procedure*

**FINDINGS, IMPACT, AND ANALYSIS:**

There are different levels of transparency in siting facilities subject to ULURP versus facilities subject to Article 9.

In a nutshell, agencies are required to submit Article 9 statements to the mayor under the Fair Share Criteria. Community boards, borough presidents, and DCP receive a copy. The vendor is not required to hold a public hearing that allows the community to comment and provide input on the proposal. While the community is notified before an Article 9 is submitted, the community ultimately plays a passive role by not being guaranteed the opportunity to comment and therefore is not a direct part of the decision-making process.

When City Planning produced its assessment in 1995, there were approximately twice as many Article 9 facilities (42 percent) as there were ULURP facilities (19 percent). Our DHS FOIL request shows that there were 19 Article 9 Statements over a five-year period from 2006 through late 2011.<sup>40</sup> There have been no adult or family shelters operated directly by DHS in recent years. As a result, the high level of public input built into the ULURP process is not applicable to recent shelter siting.

In our review of the Article 9 Statements to the mayor received via a FOIL request to DHS, we focused on Article 4.2(b)—meetings, consultations, or communications with community boards and/or borough presidents. We found that in general advance notice of the proposed shelter was given to the community board by both the service provider and by DHS. We further found, however, that the timeframe of notification to the community board and public officials of the intent to enter into contract with a service provider was inconsistent, ranging from more than two years in advance to as little as one day in advance. In some instances, the community board was notified one month after the commencement of the facility's operation. The fluctuations in time of communication render the information unreliable, arbitrary, and non-transparent to the public.

<sup>40</sup> New York City Comptroller's Office FOIL Request #0921-2011. New York City Department of Homeless Services. Adult and Family Shelters.



This sentiment is expressed in the comments from the borough presidents below:

*"My response [to the Citywide Statement of Needs] urges the siting of municipal facilities involve closer consultation with my office and affected communities, particularly when alternative locations are submitted for consideration."*

— Bronx Borough President Ruben Diaz, Jr.<sup>41</sup>

*"The City must make specific efforts to balance this critical Citywide need [demand for homeless services] with neighborhood concerns. Communities have responded to the agency's [DHS] lack of meaningful engagement with the surrounding neighborhoods when locating transitional housing sites and called for greater community input and transparency in the development process. DHS should implement a more transparent process when siting new shelters to ensure these shelters work with the neighboring communities."*

— Manhattan Borough President Scott M. Stringer<sup>42</sup>

*"Notification to the Office of the Queens Borough President must go out as soon as it has been determined which are the best locations [for siting]..."*

— Queens Borough President Helen M. Marshall<sup>43</sup>

### **Article 9 analyses are subject to significantly less public review than ULURP facilities**

Under ULURP, the community has the opportunity to provide feedback at several different stages in the decision-making process. Public review is built into ULURP through public hearings held by the community board, borough president, and City Planning Commission. These hearings mean that the City takes public comments and written recommendations into consideration. Fair Share Criteria are also included in the ULURP application.<sup>44</sup> No ULURP application will be certified unless the Fair Share section is complete.<sup>45</sup>

Whereas ULURP applications are subject to a high degree of public review, Article 9s are not subject to Planning Commission review and do not require a series of public hearings.

### **Article 9 analyses are subject to significantly less public review than Statement of Needs facilities**

There is also a significant difference between the level of public consultation in facilities included in the Statement of Needs and Article 9 facilities. The Statement of Needs in and of itself is more representative than an Article 9 analysis because agencies create the Statement based on community boards' needs assessments. Community boards then provide comments on the final product as a compilation of agencies' needs. Unlike Article 9 analyses, the Statement of Needs is a publically accessible document available online.

The Comptroller's Office's FOIL request of Article 9 statements included Fair Share analyses, but no evidence of public meetings such as agendas, transcripts, presentations, or other materials documenting that consultation took place. No information was provided as to whether a meeting was held, the number of attendees, key points of discussion, or a vote. In some cases, public notices from the vendor to the community were included in the contract packages, but this was done on an ad hoc basis at the discretion of the vendor. These materials must be obtained through a separate FOIL request, or by searching the City's public records or community board websites, which vary from district to district.

41 New York City Citywide Statement of Needs. *New York City Borough President/Community Board comments*. Fiscal Year 2011-2012. Page 4.

42 New York City Citywide Statement of Needs. *New York City Borough President/Community Board comments*. Fiscal Year 2012-2013. Page 30.

43 New York City Citywide Statement of Needs. *New York City Borough President/Community Board comments*. Fiscal Year 2011-2012. Page 20.

44 New York City Department of City Planning. *Uniform Land Use Review Process*. Section 19.

45 New York City Department of City Planning. *"Fair Share" Criteria: A Guide for City Agencies*. Revised, Spring 1998. Page 6.



**By circumventing the City's procurement process, DHS' Per Diem policies place the onus on vendors, not the City, to ensure public participation requirements are met**

Whereas DHS' internal policies require proposers to notify communities before submitting a proposal to the agency to site a shelter, Fair Share analyses are not required to disclose community notification or public meeting materials. Therefore, there is no public record of community discussion within the analysis. Furthermore, vendors and contractors are not subject to FOIL requests under the City's rules. As such, this process significantly affects the transparency of the process. This is concerning, particularly for emergency shelters that go directly to an OERFP process and are already sited in the community.

This process places the responsibility for complying with public participation requirements and initiatives in the hands of providers rather than the City. DHS appears to lack oversight for ensuring that community consultation occurs and that an enforcement mechanism or role is in place. Essentially, the process appears extra-governmental, which is disturbing from a transparency point of view. Moreover, contractors (vendors) are not subject to the Freedom of Information Law, which is increasingly frustrating because information is inaccessible to the local public.

Of the 14 emergency contracts in place between January 2010 and August 2012<sup>46</sup>, 10 have gone on to become permanent shelters through the OERFP process.

**OERFP guidelines lack reference to an Article 9 analysis**

While DHS acknowledged that the OERFP process includes an analysis of the Fair Share Criteria during a public hearing for the Committee on General Welfare, the guidelines themselves neither discuss nor reference the Fair Share Criteria.<sup>47</sup>

**Per Diem shelters are not subject to Fair Share analyses.**

Unlike City facilities, Per Diem shelters are non-contracted facilities that are not required to undertake a Fair Share analysis.

**Purchase Orders (per diem arrangements) should not be used for contracting shelters**

Purchase Orders should only be used for non-procurement expenditures for which a contract is not required, according to Comptroller's Directive #24. Audits going back to 1998, however, show that the agency continues to use this practice rather than formally contracting with shelter providers (March 2010). Moreover, the Comptroller's Office asserts that "per diem" arrangements are subject to the PPB Rules and the DHS' program violates the City's procurement rules. Per Diem shelters should be contracted facilities.

**Emergency Shelters act as a pathway for establishing long-term shelters**

While recognizing that emergency shelters need to bypass traditional public involvement to expedite the procurement process and get shelters up and running, emergency shelters are often not temporary in nature. Long-term facilities deemed urgent enough by DHS to justify an emergency declaration promote the continuation of an emergency shelter as a permanent facility through the OERFP process.

Emergency shelters end up acting as a pathway for establishing permanent shelters. We analyzed the 14 emergency shelters that were procured between January 1, 2010 and August 8, 2012 (all emergency contracts after this date were related to Hurricane Sandy) and found that 10 of the 14 had become permanent shelters through the Open Ended RFP process.<sup>48</sup> This is concerning as public notification processes take place after siting decisions have already been made. We acknowledge the important role that emergency procurement plays but are concerned that emergency shelters are becoming a mechanism for bypassing public involvement.

<sup>46</sup> These numbers exempt shelters contracted in relation to Hurricane Sandy.

<sup>47</sup> City Council City of New York. *Transcript of the Minutes of the Committee on General Welfare*. June 10, 2010.

<sup>48</sup> Source: New York City Comptroller, Office of Contracts Administration, OASIS Contract Database 1/1/2010 – 8/10/2012



While recognizing the need for true emergencies, our concern is that emergency procurement may be replacing proper planning, which could have a negative impact on communities and shelter residents alike. The loss of the Advantage Program<sup>49</sup> and state funding has negatively affected the City's ability to meet shelter needs, especially given that there might not be an emergency as the agency continues to procure shelters through the regular OERFP process. It is the responsibility of the City to ensure that Fair Share analyses are not only conducted for planning purposes but also monitored and enforced to ensure that Fair Share impacts siting decisions.

## **RECOMMENDATIONS**

- 2.1 Facilities subject to Article 9 should undergo greater scrutiny and require more robust public review. Article 9 facilities should be published in the annual Statement of Needs and Article 9 analyses submitted to communities before a contract is executed and a facility operated.**
- 2.2 The community should be notified in writing when DHS intends to establish or expand a transitional housing site before entering into a formal contract with a provider.**
- 2.3 DHS' OERFP Guidelines should be updated to reference Article 9 statements and Fair Share.**
- 2.4 DHS should follow the City's procurement rules with regard to per diem shelters so that DHS obtains written agreements for all per diem shelters and these facilities are subject to the same level of public review and analysis as contracted shelters. Emergency shelters should be exempt.**
- 2.5 DHS should require Fair Share analyses and shelter contracting packages include documentation of public notification and consultation, and make this information readily available to the public.**

Establishing an early and consistent timeframe to notify the community about a proposer's intent to operate a shelter as a non-ULURP facility will allow non-ULURP proposers to include community discussion as part of the Fair Share documentation.

- 2.6 Strengthen DHS' planning so that communities are involved in siting long-term shelters procured under emergency procurement and disclose information throughout this process.**

## **RESEARCH QUESTION #3:**

➔ *Is adequate oversight and reporting of Fair Share in place?*

## **CONCLUSION:**

While guidelines are in place and an assessment has been conducted, these documents are outdated and monitoring could be improved.

<sup>49</sup> Advantage is a rental subsidy that helps clients transition from temporary, emergency shelter to self-sufficiency as quickly as possible. New York State withdrew all federal and state support for the program which terminates the City's authority and fiscal ability to run the Advantage program. The program was discontinued as of February 2012 (DHS website, Frequently Asked Questions, #14)



## **RESEARCH CRITERIA:**

We reviewed the two City documents that discuss the Fair Share analysis, the Mayor's Management Report, City Council hearings, and relevant websites.

## **FINDINGS, IMPACT, AND ANALYSIS:**

We found that there are 3 primary methods of oversight in the Fair Share process: the Department of City Planning's periodic monitoring and reporting (cite footnote #30, page 14); the mayor's annual Management Report (cite footnote #37 from page 17); and City Council hearings. These are a critical component of transparent and accountable decision-making. Unfortunately, weak monitoring and analysis of Fair Share limits its effectiveness.

### **Consistent monitoring of Fair Share needs to take place.**

The Department of City Planning is responsible for monitoring the Fair Share Criteria and evaluating its effectiveness. DCP is also responsible for reporting its findings to the CPC and the mayor within 24 months of adoption and periodically thereafter.<sup>43</sup>

Our research found that past assessments of Fair Share by DCP have been conducted irregularly and infrequently. As a result, known weaknesses with the Fair Share process, persist. One common shortcoming identified by prior assessments, for example, is the lack of timely public notification and input.

The Mayor's Management Report (MMR) contains the City's Gazetteer, or list of City-owned and leased properties, but very little information about the MMR is communicated to the public, making this information difficult to obtain. While the Gazetteer is found online in the Mayor's Management Report (MMR), its placement in the MMR is not communicated on DCP's Fair Share webpage, making the Gazetteer challenging to locate.

The City Council Subcommittee on Landmarks, Public Siting, and Maritime Uses' held a public hearing in April 2011 on the oversight of the Fair Share Criteria, which confirmed many of the issues relating to transparency identified in this report.

Ultimately, the Fair Share rules do not require routine monitoring and systematic assessments of how the process is being implemented on the ground. As a result, many problems persist.

### **Comprehensive analysis of Fair Share needs to take place.**

An unintended consequence of limited oversight and analysis of the Fair Share process is that a systematic, citywide analysis of Fair Share is lacking, therefore making it difficult to gauge the effectiveness of the Criteria with meetings its intended goals.

This is concerning considering that weaknesses within the process persists since Fair Share was put into place over 20 years ago, underscoring the critical role that oversight plays in promoting transparency in the siting process.



## **RECOMMENDATIONS:**

**3.1** Revise the Fair Share Criteria to ensure that regular and consistent oversight and reporting is occurring.

**3.2** Conduct a comprehensive analysis of the implementation of Fair Share.

**Note:** the City Council Subcommittee on Landmarks, Public Siting, and Maritime Uses will be producing a forthcoming report that provides an overall analysis of the process which is scheduled for release Winter 2013

**3.3** Address weaknesses commonly found in prior assessments that have persisted since Fair Share was first put into place.

## **CONCLUSION**

The goal of this study is to facilitate a discussion about whether the Fair Share process is working as intended. The study analyzes the Fair Share process in the context of the New York City shelter system to determine if the City gives communities sufficient opportunity to provide input in siting adult and family homeless shelters. Our research indicates that communities are not being given appropriate notice and opportunities to provide input.

### **What did we find and why does this matter?**

We found that there is poor notification and limited community participation in decisions about siting family and adult homeless shelters. This is concerning because most shelters are contracted facilities, which have a weaker level of public participation than shelters operated by DHS and are required to go through the City's land use review process. Moreover, annual reporting of shelters is underrepresented as per diem shelters are excluded from annual reports. These shelter providers do not even have written agreements with DHS, instead relying on handshake deals. Lastly, monitoring of Fair Share is weak, leaving the City vulnerable to poor planning and inconsistent siting decisions.

Our analysis also found that clustering is occurring and that certain neighborhoods across the City have a higher proportion of family and adult shelters than others. Our research also found that those neighborhoods with the most shelters are often low-income and, therefore, have fewer resources to make their voices heard and that the siting of homeless shelters in these neighborhoods may permanently condemn them to poverty. While advocates differ on the benefits and risks of this clustering, we believe that all communities should be afforded the opportunity to participate in the process.

**The implications of weak transparency or inconsistent implementation of Fair Share is that decision-makers are not able to effectively utilize all of the City's resources available in the siting process.** The Statement of Needs, for example, was intended to ensure communities' priorities are taken into consideration when deciding where to site the City's facilities, yet contains few details and is rarely used. The *Map* plays an important role because it allows communities to make educated decisions about placing services within a Citywide context, but it is difficult to access.

**We support open and transparent decision-making and believe that the best outcome stems from an informed and engaged public.** We developed this study in order to shed light on transparency in the Fair Share Criteria with the hope of strengthening the public consultation in siting family and adult homeless shelters. **By involving neighborhood residents in the siting process, concerns can be addressed up front and in a constructive manner. Residents may even become involved in designing the facility and participating in its programming.**<sup>50</sup>

<sup>50</sup> American Planning Association. *Smart Growth Legislative Guidebook: CPC Criteria for the Location of City Facilities*. 1990.



Our study concludes with a series of recommendations designed to bolster transparency in the siting process. We believe creating greater consistency among siting different types of shelters can help further meet the Fair Share Criteria's goal of an open and systematic planning process. Creating a consistent timeframe for communicating with communities about proposed actions for siting contracted shelters early in the process is one example. **We hope that increasing transparency will result in sound planning practices in the best interest of the homeless population, communities, and the City as a whole.** We also urge the City to develop stronger planning tools through the use of technology and data to improve transparency and access to information.

Our ultimate goal is that this information will be used to inform discussion among policymakers, advocates, and the public, and provoke discussion and action about whether the Fair Share process is working as intended. We hope these efforts will allow and encourage communities to make informed decisions that result in shelter sitings that are in the best interest of all communities in New York City.



# APPENDIX



**I: BREAKDOWN OF FAMILY AND ADULT HOMELESS SHELTERS PER COMMUNITY DISTRICT**

Borough	Community District	# of Shelters
MANHATTAN	CD1	0
	CD2	1
	CD3	15
	CD4	2
	CD5	2
	CD6	2
	CD7	4
	CD8	1
	CD9	9
	CD10	22
	CD11	15
	CD12	1
		<b>Total</b>
BRONX	CD1	7
	CD2	19
	CD3	10
	CD4	31
	CD5	22
	CD6	23
	CD7	12
	CD8	0
	CD9	13
	CD10	2
	CD11	0
	CD12	9
		<b>Total</b>

Source: New York City Department of Homeless Services (Family and Adult Per Diem Shelter List July 2011)

**BREAKDOWN OF FAMILY AND ADULT HOMELESS SHELTERS  
PER COMMUNITY DISTRICT (continued)**

Borough	Community District	# of Shelters
BROOKLYN	CD1	2
	CD2	7
	CD3	25
	CD4	0
	CD5	9
	CD6	1
	CD7	2
	CD8	17
	CD9	18
	CD10	0
	CD11	0
	CD12	0
	CD13	0
	CD14	11
	CD15	1
	CD16	19
	CD17	13
	CD18	2
	<b>Total</b>	<b>127</b>

Source: New York City Department of Homeless Services (Family and Adult Per Diem Shelter List July 2011)



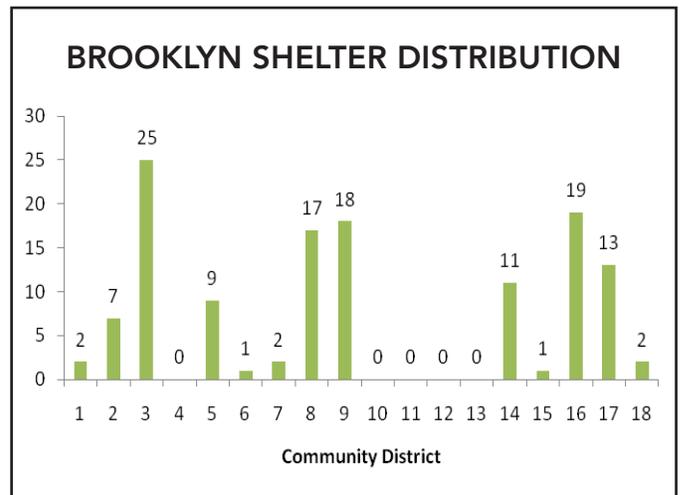
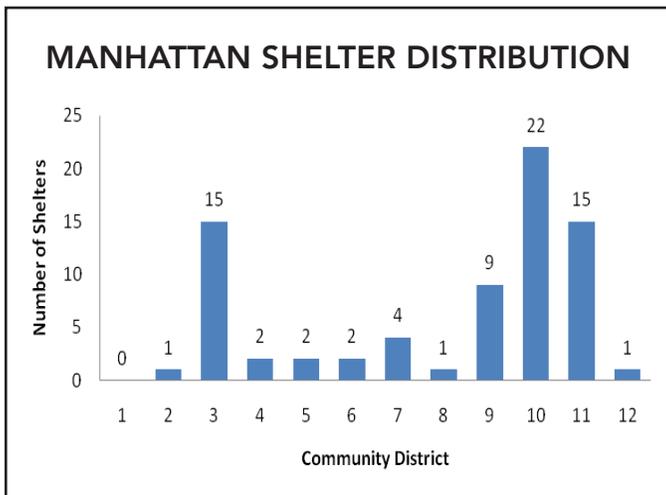
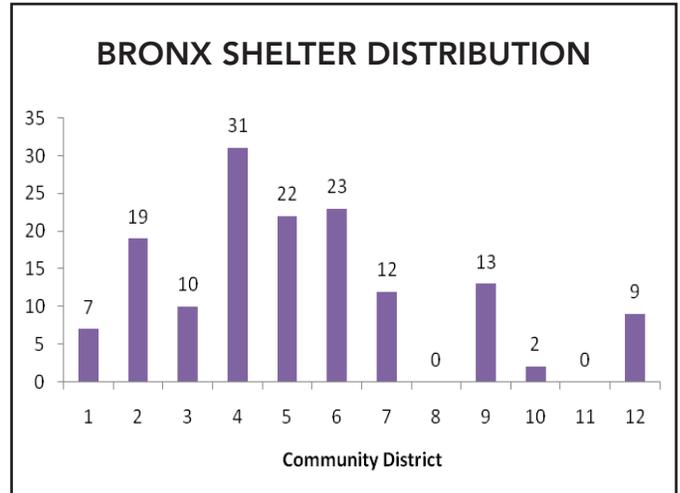
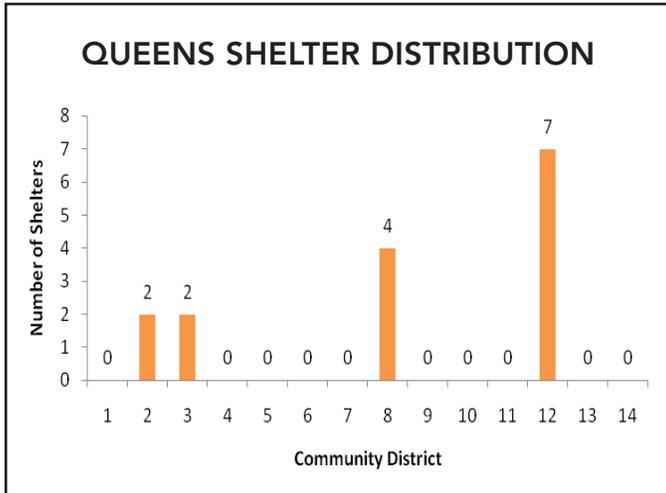
**BREAKDOWN OF FAMILY AND ADULT HOMELESS SHELTERS  
PER COMMUNITY DISTRICT (continued)**

Borough	Community District	# of Shelters
QUEENS	CD1	0
	CD2	2
	CD3	2
	CD4	0
	CD5	0
	CD6	0
	CD7	0
	CD8	4
	CD9	0
	CD10	0
	CD11	0
	CD12	7
	CD13	0
	CD14	0
	<b>Total</b>	<b>15</b>
STATEN ISLAND	CD1	1
	CD2	1
	CD3	4
	<b>Total</b>	<b>6</b>
<b>Grand Total</b>		<b>370</b>

Source: New York City Department of Homeless Services (Family and Adult Per Diem Shelter List July 2011)



**II: DISTRIBUTION OF SHELTERS BY BOROUGH**



Source: New York City Department of Homeless Services (Family and Adult Per Diem Shelter List July 2011)

### III: ACTIONS REQUIRING ULURP (SECTION 197-C OF THE CITY CHARTER)

<http://www.nyc.gov/html/dcp/html/luproc/ulpro.shtml#actions>

**Changes to the City Map.** The *City Map* is the official adopted map of the City. It shows the location, dimension, and grades of streets, parks, public places, and certain public easements. The Director of City Planning is the custodian of the *City Map*.

**Mapping of subdivisions or platting of land into streets, avenues, or public places.** This section has not been used since 1976.

**Designation or change of zoning districts.** The Zoning Resolution guides the development of the City and includes regulations dealing with use, bulk, and parking. Zoning districts and boundaries are shown on the zoning maps and identify the permitted use, density, height, setback, yard, and other bulk regulations and parking requirements for development on individual sites. Changes to the zoning maps, including district designations and boundaries, are subject to ULURP. Amendments to the Zoning Resolution are not subject to ULURP but go through a similar public review process.

**Special Permits within the Zoning Resolution requiring approval of the City Planning Commission (CPC).** Special permits are discretionary approvals that can modify zoning controls such as use, bulk, and parking. *(Note: CPC authorizations pursuant to the Zoning Resolution are not subject to ULURP. Variances and Special Permits reviewed by the Board of Standards and Appeals are also not subject to ULURP.)*

**Site selection for capital projects.** This includes the selection of sites for new City facilities such as sanitation garages, fire houses, libraries, and sewage treatment plants. A capital project is the construction or acquisition of a public improvement classified as a capital asset of the City.

**Improvements in real property the costs of which are payable other than by the City.** Applications for such non-City improvements are rarely made.

**Housing and urban renewal plans and projects pursuant to City, state, and federal laws.** Urban Renewal Plans developed pursuant to the General Municipal Law (Article 15) are required to be reviewed by the Charter and State Law.

**Sanitary or waterfront landfills.**

**Disposition of City owned property.** This includes sale, lease, or exchange of real property.

**Acquisition of real property by the City.** Office space acquisition is excluded and subject to a separate review pursuant to Section 195 of the City Charter.



## **IV: A GLOSSARY OF TERMS AND ACRONYMS**

### **Adult Shelters**

DHS considers a single adult to be any man or woman over the age of 18 who seeks shelter independently, without being accompanied by other adults and/or minors.

DHS website on temporary housing assistance: <http://www.nyc.gov/html/dhs/html/housing/housing.shtml>

### **Article 9**

The siting of a City facility not subject to the Uniform Land Use Review Procedures (ULURP) is subject to 'Article 9' of the Fair Share Criteria. This includes facilities 'such as contracts with private providers that establish City facilities' which are required to submit a written 'Article 9' statement to the mayor. This statement describes the agency's consideration and application for the relevant Fair Share Criteria, including direct notification and consultation with the affected community. Copies of the Article 9 statement are sent to the affected community board(s), borough president, and the Department of City Planning.

### **CB: Community Board**

Community boards are local representative bodies and the most local branch of government in New York City. The City Charter gives Community Boards a formal role in decisions on land use, preparation of capital and expense budgets, and monitoring service delivery. Each Board consists of up to 50 unsalaried members who are selected and appointed by the Borough Presidents and City Council members.

Mayor's Community Affairs Unit: <http://www.nyc.gov/html/cau/html/cb/about.shtml>

### **CPC: City Planning Commission**

The CPC consists of 13 commissioners and is responsible for the conduct of planning relating to the orderly growth and development of the City, including: adequate and appropriate resources for the housing, business, industry, transportation, distribution, recreation, culture, comfort, convenience, health and welfare of its population. The Commission meets regularly to hold hearings and vote on applications, as described above, concerning the use, development and improvement of real property subject to City regulation.

CPC Website: <http://www.nyc.gov/html/dcp/html/about/plancom.shtml>

### **CSP: Competitively Sealed Proposal**

A type of solicitation (also called requests for proposals or RFPs), where a City agency may utilize more than just price as the selection criteria in making an award of a contract.

Procurement Policy Board Rules:

<http://www.nyc.gov/html/mocs/ppb/downloads/pdf/April2010rulesmodifiedMar2011pdf.pdf>

New York City Charter: <http://law.onecle.com/new-york/new-york-city-charter/chapter13.html>

### **DCP: Department of City Planning**

The Department of City Planning (DCP) promotes strategic growth, transit-oriented development, and sustainable communities in the City, in part by initiating comprehensive, consensus-based planning and zoning changes for individual neighborhoods and business districts, as well as establishing policies and zoning regulations applicable Citywide.

DCP Website: <http://www.nyc.gov/html/dcp/>

### **DHS: Department of Homeless Services**

The mission of the Department of Homeless Services (DHS) is to prevent homelessness when possible and to provide short-term, emergency shelter for individuals and families who have no other housing options available.

DHS website: <http://www.nyc.gov/html/dhs/html/about/about.shtml>



## Fair Share Criteria

In 1989, the New York City Charter required the Mayor, in consultation with the borough presidents, to establish rules for siting, expanding, and disposing of City facilities. The Fair Share Criteria were later developed and are “a set of guidelines that require agencies to inform and consult with affected communities early in the planning process, and to consider, and balance, concerns of equity and efficiency.” The Criteria are not quantitative formulas and do not have a formula for measuring fairness; rather, fairness is defined as “the outcome of sound procedures for deciding where facilities are sited.”

## Family Shelters

Also called ‘Tier II’ shelters, family shelters include any family with children or any family without minor children such as legally married couples, domestic partnerships, or adults establishing medical dependence of one applicant upon another. Family shelters provide private rooms or apartment-style units and offer on-site social services in accordance with Title 18, Part 900 of the Rules and Regulations of the State of New York.

## FOIL: Freedom of Information Law

A New York State regulation that gives members of the public access to public records.

New York State Department of State Committee on Open Government Website:

<http://www.dos.ny.gov/coog/foil2.html#s84>

## MMR: Mayor’s Management Report

The Mayor’s Management Report (MMR), which is mandated by the City Charter, serves as a public report card on City services affecting New Yorkers. The MMR is released twice a year. The Preliminary MMR provides an early update of how the City is performing four months into the fiscal year. The final MMR, published each September, looks retrospectively at the City’s prior fiscal year performance. <http://www.nyc.gov/html/ops/html/data/mmr.shtml>

## MOCS: Mayors Office of Contract Services

The City’s compliance and oversight agency for procurement.

MOCS website: <http://www.nyc.gov/html/mocs/html/home/home.shtml>

## OERFP: Open Ended Request For Proposal

An ongoing solicitation that has no end date. Proposals may be submitted at any time, and awards are made on a rolling basis rather than at a set time.

Procurement Policy Board Rules:

<http://www.nyc.gov/html/mocs/ppb/downloads/pdf/April2010rulesmodifiedMar2011pdf.pdf>

## PPB: Procurement Policy Board

The Procurement Policy Board (PPB) is authorized to promulgate rules governing the procurement of goods, services, and construction by the City of New York under Chapter 13 of the Charter of the City of New York.

Awards are made on a rolling basis rather than at a set time.

PPB website: <http://www.nyc.gov/html/mocs/ppb/html/home/home.shtml>

## RFP: Request for Proposal

A type of solicitation (also called Competitively Sealed Procurement, or CSP), where vendors are chosen for a contract based on price and quality-based factors.

NYC Mayor’s Office of Contract Services: <http://www.nyc.gov/html/mocs/html/procurement/procurement.shtml>



### **SON: Statement of Needs**

Section 204 of the City Charter requires the City to produce an annual Statement of Needs. This Statement is described as “the earliest formal disclosure of the City’s plans to site new facilities or substantially change them.” The Statement “contains proposals for which ULURP applications or contract approvals are anticipated” during the relevant fiscal year.

2013/2014 Statement of Needs: [http://www.nyc.gov/html/dcp/pdf/pub/son\\_13\\_14.pdf](http://www.nyc.gov/html/dcp/pdf/pub/son_13_14.pdf)

### **Tier II Shelters**

Also known as ‘Family Shelters,’ Tier II shelters include any family with children or any family without minor children such as legally married couples, domestic partnerships, or adults establishing medical dependence of one applicant upon another. Tier II facilities provide private rooms or apartment-style units and offer on-site social services in accordance with Title 18, Part 900 of the Rules and Regulations of the State of New York.

### **ULURP: Uniform Land Use Review Procedures**

A standardized procedure whereby applications affecting the land use of the City is publicly reviewed. Department of City Planning website: <http://www.nyc.gov/html/dcp/html/luproc/ulpro.shtml#actions>





## Comptroller of the City of New York

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NEW YORK CITY COMPTROLLER  
JOHN C. LIU