



NEW YORK CITY COMPTROLLER
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Audit Report on New York City's Compliance with Fair Share

Audit MD22-101A | November 9, 2023





THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

November 9, 2023

To the Residents of the City of New York:

My office has audited the Department of City Planning (DCP), the City Planning Commission (CPC) and the Office of the Mayor to (1) assess the City's effectiveness in ensuring compliance with Fair Share Criteria when siting or expanding City facilities; and (2) identify the components of the Fair Share Criteria and assess how they were applied to new and expanded facilities. The audit found that New York City does not have a framework in place for ensuring compliance with the Criteria. The current process does not require the independent review of all City facilities for compliance with Fair Share Criteria. As a result, the Criteria is not applied consistently.

The audit found that 74% of sites were not independently reviewed before final decisions were made about site locations; approximately 40% of these were in community districts with an already high density of facilities, or beds-to-population (BTP) ratios. While facilities placed in communities with high BTP ratios are subject to additional considerations, auditors found that these considerations were often ignored. Also, the BTP ratio—which should be calculated annually—has not been updated since 2015.

Additionally, the Citywide Statement of Needs (SON)—a document intended to inform communities of the City's facility siting needs and to provide an opportunity for community input—did not contain information about all sitings.

Finally, Fair Share Criteria has not been reviewed or updated since 1995.

The audit makes six recommendations intended to improve the siting of City facilities. The City should identify a central body with responsibility for enforcing compliance with Fair Share Criteria; establish a monitoring program to ensure all Fair Share requirements are met; publish an updated Fair Share Criteria and Guide; immediately and regularly update the BTP ratio and publish the data on its website; and ensure that the SONs include all new sitings, including contracts that result in the opening of new facilities.

The results of the audit have been discussed with DCP, CPC and Mayor's Office officials, and their comments have been considered in preparing this report. Their complete written responses are attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Lander".

Brad Lander
New York City Comptroller

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Audit Impact

Summary of Findings

The audit found that New York City does not have a framework in place for ensuring compliance with the Fair Share Criteria. The current process does not require that all sitings of City facilities are independently reviewed by a third party (such as the City Planning Commission [CPC]) for compliance with the Criteria. In the absence of such review, the Criteria is not applied consistently.

Seventy-four percent of the sitings provided to the auditors for the audit period (Fiscal Years 2018 through 2022) fell into a category that was not reviewed by a third party before decisions to site facilities were made, and approximately 40% of these resulted in sitings within community districts with an already high ratio of residential facility beds-to-population (BTP ratio). Siting facilities in communities with high BTP ratios requires additional considerations. However, the auditors found that these considerations were sometimes ignored. Additionally, all sitings during the audit period were based upon a Citywide BTP ratio calculation from 2015, which has not been updated since.

The audit also found that the Criteria have not been reviewed since 1995, and that the Citywide Statement of Needs (SON)—a document intended to inform communities of the City’s facility siting needs and to provide an opportunity for community input—did not contain information about all sitings.

Intended Benefits

This audit identified areas for improvement in the City’s oversight of the Fair Share process, including the need for greater transparency.

The Mayor’s Office noted several changes that have already been made in response to the audit, including the issuance of new guidance to agencies and the implementation of a new system for tracking Article 9 statements. The Department of City Planning (DCP) agreed to update the bed-to-population ratio calculation used to site facilities based on current Census Data, and agreed in principle with the need to review and update current processes and guidance documents.

Introduction

Background

In 1990, New York City adopted “Fair Share,” rules which require the City government to ensure that public services and facilities are evenly and equitably distributed across all neighborhoods and communities. These rules cover all government services and are designed to provide for the fair distribution of City facilities—whether communities perceive these facilities as beneficial or burdensome.

Pursuant to Section 203 of the New York City Charter, *Criteria for Location of City Facilities* (“Fair Share” Criteria), the Mayor and the Borough Presidents are authorized to establish criteria for the siting, expansion, and closing (or reduction in size or services) of City facilities and file them with the City Planning Commission (CPC).¹ Fair Share Criteria were adopted in 1990 and went into effect in 1991.²

In 1995, the Department of City Planning (DCP) conducted a review of the Fair Share process and issued a report called *Fair Share, An Assessment of New York City’s Facility Siting Process*, which made recommendations to improve the process.³ In 1998, DCP issued *Fair Share Criteria, A Guide for City Agencies*, as guidance to help agencies apply the criteria and identify what should be included in each article.

The Fair Share Criteria is intended to foster neighborhood stability and revitalization by furthering the equitable distribution of City facilities. Fair Share encourages City agencies to consult with communities when planning new facilities or expanding existing facilities, establishing a set of considerations that they must follow, including density of facilities and services, adverse impact, accessibility, and other factors.

¹ A “City facility” is a facility providing services whose location, expansion, closing, or reduction in size is controlled and supervised by a City agency, and which is (a) operated by the City on property owned or leased by the City which is greater than 750 square feet in total floor area; or (b) used primarily for a program or programs operated pursuant to a written agreement on behalf of the City, which derives at least 50% and at least \$50,000 of its annual funding from the City.

² This criteria was added as an appendix to *The Rules of the City of New York*, Title 62: City Planning.

³ Per New York City Charter Section 203(b), the Mayor, after consulting with the Borough Presidents, may submit to the CPC proposed amendments to the rules which the Commission may adopt, modify, or disapprove after a public review procedure.

Only City facilities are subject to these criteria; the criteria do not apply to private entities, State or federal agencies, or other entities operating within the City of New York.⁴

Three types of siting applications require City agencies to produce Fair Share Statements, which document the agency's consideration and application of Fair Share Criteria:⁵

- **Uniform Land Use Review Procedure (ULURP) Applications**, which cover proposed City facilities other than administrative office space;
- **Charter Section 195 Applications**, which cover administrative office space; and
- **Article 9 Fair Share Statements**, which cover actions not subject to ULURP or Section 195 review, such as contracts with private providers that establish City facilities. These include most day care centers and homeless shelters.

Key participants in the ULURP and the Section 195 process are DCP, CPC, Community Boards (CB), the Borough Presidents (BP), the Borough Boards, the City Council, and the Mayor.

Article 9 Fair Share Statements are not subject to CPC hearings but are required to be sent to the Mayor, with copies sent to the director of DCP and the affected Community Boards and Borough Presidents.⁶ As a courtesy, copies should also be sent to the Speaker of the City Council and each affected City Council Member.

As of June 2022, there were 32,437 facilities listed in DCP's Facilities Database.⁷ Of the 32,437 total facilities in the database, 7,040 were City facilities and 25,397 were non-City facilities.⁸

According to Section 204 of the City Charter, each year, the Mayor's Office, DCP, the Department of Design and Construction (DDC), and the New York City Department of Citywide Administrative Services (DCAS) are required to issue the Citywide Statement of Needs (SON). The purpose of the SON is to provide transparency and advance notice of facility sitings to elected officials and members of the public. The SON must include the proposed location by borough and, if practical, by community district (CD) or group of CDs, as well as the specific criteria to be used in locating the new facility or expanding an existing facility, its public purpose, size, and space use type. After

⁴ Although only City facilities are subject to this criteria, the sponsoring agency and CPC will take into account the number and proximity of all other facilities, whether private, City, State, or federal, in proposing or evaluating the location of a facility.

⁵ Fair Share Statements include a project description and a Fair Share analysis and cite the various criteria applicable to the siting.

⁶ DCP's director is appointed by the Mayor and is also the Chair of the City Planning Commission.

⁷ DCP publishes this information yearly. As of September 2023, the last update was in June 2022.

⁸ City facilities include facilities and program sites owned, operated, funded, licensed, or certified by the City. The Criteria do not apply to the siting of facilities by private entities, State, or federal agencies, or entities that have been established by State law, such as the Health and Hospitals Corporation, the School Construction Authority, the City University of New York, the New York City Housing Authority, or the New York City Transit Authority.

the SON is published, Borough Presidents and Community Board leaders have 90 days to submit their comments in writing to DCP.

The Fair Share Criteria requires that DCP publish an annual index of the number of beds per thousand residents. This is called the beds-to-population (BTP) ratio. The index lists the type of residential facility and the total number in each community district. The index is based on the number of residential beds in all City, State, federal, and private facilities in operation or approved for operation in New York City. This index is intended to assist City agencies siting a Residential Facility to conduct a thorough review of the area under consideration and determine whether it is already oversaturated with similar facilities, and whether the new facility will become an unnecessary burden to the community.

Section 6.53 of the Fair Share Criteria states that proposed sitings of residential facilities in community districts with high BTP ratios are subject to additional considerations.⁹ An area is considered to have a high BTP ratio if the ratio is among the 20 highest community districts and exceeds the Citywide ratio. The last Citywide BTP ratio was calculated in 2015.¹⁰

For the purposes of this audit, auditors reviewed Articles 4, 5, 6, and 9 of the Fair Share Criteria (see Appendix I for a more detailed list of the factors considered under each article and a summary below under Chart I). Most Department of Homeless Services (DHS) and Human Resources Administration (HRA) sitings (relating to homeless facilities and affordable housing) fall under Article 9 of the criteria. According to the Fair Share Criteria, these sitings require the submission of an Article 9 Statement to the Mayor, with copies sent to the affected Community Boards, Borough President, and DCP Director (who also serves as the CPC Chair).

Article 9 Statements notify City officials of planned sitings that are not subject to ULURP (non-office facilities) or Section 195 review (office facilities). Article 9 Statements are supposed to explain how the Fair Share Criteria was applied, as well as any departures from the Criteria, and they must provide evidence that comments from the affected Community Board and Borough President were considered.

Auditors received 170 Article 9 Statements from DCP and the Mayor's Office that were submitted by City agencies during the period of Fiscal Years 2018 through 2022. Articles 4, 5, 6 and 9 all have their own areas of applicability, but they also interact, as discussed in the Detailed Findings section below.

Chart I below lists the Criteria articles reviewed by the auditors.

⁹ Residential facilities are categorized as: (a) correctional facilities, including prisons, jails, detention and remand facilities and youth detention facilities; (b) nursing home and residential health care facilities, including hospices; (c) small residential facilities serving no more than 24 people, including group homes, halfway houses, residential facilities for children, residential substance abuse and mental health facilities, temporary shelters, transitional housing; (d) large residential care facilities serving 25 people or more, including halfway houses, residential facilities for children, homes for adults, residential substance abuse and mental health facilities, temporary shelters, transitional supported housing, and psychiatric centers. Please see Appendix III for a list of typical neighborhood and regional facilities.

¹⁰ The BTP ratio is calculated by facility capacity divided by community district Census Population. The population's data source is the U.S. Census Bureau, decennial data (issued every 10 years).

Chart I - Applicable Fair Share Criteria Reviewed

Article Number	Description
Article 4	Criteria for Siting or Expanding Facilities
Article 5	Criteria for Siting or Expanding Local/Neighborhood Facilities
Article 6	Criteria for Siting or Expanding Regional/Citywide Facilities
Article 9	Actions Not Subject to ULURP or Section 195

Objective

The objectives of this audit were to (1) assess the City's effectiveness in ensuring compliance with Fair Share Criteria when facilities are sited or expanded, and (2) identify the components of the Fair Share Criteria and assess how they have been applied to new and expanded facilities.

Discussion of Audit Results with DCP, CPC, and the Mayor's Office

The matters covered in this report were discussed with DCP, CPC, and the Mayor's Office during and at the conclusion of this audit. An Exit Conference Summary was sent to officials on June 26, 2023 and discussed at an exit conference held on July 11, 2023. On July 28, 2023, we submitted a Draft Report with a request for written comments.

We received written responses from DCP, CPC, and the Mayor's Office on August 11, 2023. In its response, the Mayor's Office partially agreed with two recommendations (#1 and #2). DCP and CPC agreed with three recommendations (#3, #5, #6) and disagreed with one recommendation (#4). DHS was not the subject of this audit, but nonetheless submitted a response under cover of the Mayor's Office's response. DHS' comments were considered but did not result in changes to the audit findings.

Detailed Findings

The current Fair Share process does not ensure compliance with the Fair Share Criteria. The Criteria are applied inconsistently and are out of date, having not been reviewed for close to three decades. City agencies continue to rely on outdated BTP ratios, and community districts with already high BTP ratios continued to receive a high percentage of facility sitings during the audit period. Forty percent of the Article 9 Statements reviewed during the audit resulted in the placement of facilities within neighborhoods with high BTP ratios.

Further information follows for each finding.

The City Provides Inadequate Oversight Over Fair Share

The current oversight framework does not hold any agency responsible for ensuring compliance with the Criteria. In some cases, applications must be reviewed and approved by the CPC, but this does not extend to Article 9 Statements, which are used to support the siting of residential facilities, including shelters. There is no oversight authority ensuring that Article 9 Statements contain the required analysis, that the Criteria are followed consistently, or, indeed, that Article 9 Statements are filed for all sitings that require one.

The impact of this inadequate oversight is that City agencies have consistently misapplied the Fair Share Criteria. A review of sampled Article 9 statements found that in some situations, agencies did not perform the necessary analyses of project sites and surrounding areas, which would have indicated an overconcentration of facilities. In others, agencies did not assess the impact siting facilities would have on neighborhoods as required.

The Mayor's Office provided auditors with 170 Article 9 Statements that were submitted by agencies during the audit period covering Fiscal Years 2018 through 2022. (Please see Appendix IV for the 170 Article 9 Statements by CD and submitting agency.) During the period, agencies also submitted 37 ULURP applications and 23 Section 195 applications. However, of the 230 projects (170 Article 9, 37 ULURP, and 23 Section 195) submitted by agencies, only 60 (26%)—the ULURP and Section 195 applications—were subject to review by DCP and approval by CPC to ensure that Fair Share Criteria was properly applied. (Please see Appendix V for the Borough, CDs, and neighborhoods for the 230 projects.)

An analysis of the 170 statements *not* subject to DCP review and CPC approval found that 166 (98%) were submitted by DHS, two (1%) were submitted by HRA, and one each were submitted by the Department of Sanitation (DSNY) and the Administration for Children's Services (ACS). The auditors note that neither the Mayor's Office nor CPC are able to confirm that these represent the totality of sitings for which Article 9 Statements *should* have been submitted.

A further analysis of the 170 statements found the following:¹¹

- 162 (95%) pertained to new sitings and 8 (5%) pertained to the expansion of existing facilities.
- 67 (40%) were for locations proposed in CDs with high BTP ratios; however, only one included an assessment of the potential impact on the neighborhood.

Because Article 9 statements were not reviewed by an oversight body, facilities were placed in areas with a significant number of existing facilities following minimal review by a party other than the submitting agency.

Assessment and Analysis of Facility Concentration and Neighborhood Impact Not Performed

Article 9 sitings are also subject to Articles 4 and 5, or Articles 4 and 6, of the Fair Share Criteria. This depends on the type of facility (Local/Neighborhood or Regional/Citywide), but the additional requirements are intended to regulate the concentration of certain facility types. The auditors found several areas of non-compliance, particularly with Articles 4 and 6, that led to the siting of facilities where a high concentration of similar facilities already existed.

The Criteria do not set parameters for the acceptable number of facilities within a half-mile radius, but guidance does require that an assessment be conducted to determine whether a proposed site would be placed within a half-mile of an already high concentration of similar facilities.

Both Article 4.1(b) and 6.51 require that agencies assess whether a proposed site is in an area where facilities are already concentrated, without specifying how “high concentration” is to be defined. According to Article 4.1(b), an analysis should be conducted and focus on, among other things, whether siting the proposed new City facility would exacerbate the adverse effects of an existing concentration. In addition, the Fair Share Guide states that this analysis requires more than a simple tallying, or list and map of City and non-City facilities.

It further states that it is important to draw a distinction between facilities intended primarily to serve the neighborhood where they are located and those that serve a larger area and could have been located elsewhere without impairing operating efficiency (e.g., “regional” or “non-neighborhood” facilities, like homeless shelters).

The audit found that 13 (46%) of the 28 Article 9 Statements reviewed contained no evidence that the required assessments were conducted (Fair Share Article 4.1.[b]). The auditors could not determine whether any attempt was made to avoid an undue concentration of City facilities providing similar services or serving a similar population in the area (Article 6.51), but 8 of the 13 statements for shelters indicated that there were already five or more shelters within a half-mile radius of the proposed siting. This included two that had 10 or more shelters within a half-mile radius—one in Brooklyn CD 16 (encompassing the neighborhoods of Brownsville and Ocean Hill) and one in Bronx CD 6 (Bathgate, Belmont, East Tremont, and West Farms).

¹¹ The auditors conducted detailed testing of the original 28 Article 9 Statements received; however, only limited testing of the additional 142 statements was conducted due to the time it took the agencies to submit them.

The other 15 (54%) Article 9 statements showed only partial compliance with Articles 4.1(b) and 6.51, in that they did not include the required analyses to determine whether the proposed shelters would have adverse effects on the surrounding neighborhoods. Six of these sitings were slated for CDs with high BTP ratios. While the 15 statements—all pertaining to DHS shelters—included a declaration that the proposed sites were not expected to create or contribute to a concentration of similar facilities, no analyses were included to support these assertions.

In each of these statements, DHS (the submitting agency) indicated that additional security and support services would be employed to support the added facility. However, DHS did not include an assessment of the impact the added facility would have on the area. The Fair Share Guide states that it is not appropriate to conclude that, because a neighborhood already has an adverse concentration, adding another one is unlikely to further affect its character.

Ten (36%) Article 9 Statements misrepresented the number of existing facilities within communities. As required by Article 4.1, the statement narrative should identify the number of facilities and programs within a half-mile radius. There were discrepancies with the number of facilities in the narratives of 10 statements.

Additionally, statements should list all facilities (including name, type, address, and capacity) in the appendix. Inconsistencies were found across these statements. The auditors identified a total of 143 facilities in the appendices compared to 108 facilities listed in the narrative related to Fair Share Article 4.1—a difference of 35 facilities. In two instances, the narrative did not list any facilities, while both appendices listed seven facilities.

Eight of the above 10 Article 9 Statements were for DHS shelters. According to DHS officials, the number of shelters in the narrative was more accurate than the appendix. Officials attributed the discrepancies to (1) instances where one facility is split into adjacent buildings and only counted once in the narrative but listed separately in the appendix; and (2) clusters reported in the appendix that had already been closed or were slated for imminent closure upon publication and not removed from the appendix.

Required Factors Not Considered When Siting Facilities in Community Districts with High Bed-to-Population Ratios

According to the Fair Share Criteria, when a residential facility is proposed for community districts with high BTP ratios, they are subject to additional considerations. In these situations, the Fair Share Criteria direct agencies to consider:

- Whether the facility would have a significant cumulative negative impact on neighborhood character, in conjunction with other similar facilities located within a half-mile radius (Article 6.53[a]);
- Whether the site is a good location to deliver services efficiently (Article 6.53[b]); and
- Whether alternative sites in community districts with lower BTP ratios would add significantly to construction or operation costs, or if such a site would impair service delivery (Article 6.53[c]).

The auditors' review of the 28 sitings associated with the Article 9 statements found that agencies did not adequately consider these factors, thus increasing the risk that some neighborhoods may have borne a disproportionate burden of City residential facilities.

Eighteen (64%) of the 28 sitings (two for affordable housing and 16 for homeless shelters) were in CDs with high residential BTP ratios and were subject to additional considerations (Section 6.53 [a], [b], and [c]). These areas include Manhattan CDs 3, 4, 5, 9, and 11; Bronx CDs 1, 4, and 6; and Brooklyn CDs 1, 2, 3, 7, 8, and 16. Manhattan CD 11 (East Harlem, Harlem, Randalls Island, and Wards Island Park) had 17 shelters; Bronx CD 4 (Mount Eden, Highbridge, and Concourse) had 16 shelters; and Brooklyn CD 3 (Bedford-Stuyvesant, Stuyvesant Heights, and Ocean Hill) had 16 shelters. These also included two statements for sitings within Bronx CD 6, which had 24 shelters in total (including the two proposed).

The auditors determined that none of the participating agencies siting the 18 facilities identified whether the facilities, in combination with other similar City and non-City facilities, would have a significant cumulative negative impact on the area (Article 6.53[a]).

The auditors also found that, of the 18 sitings, seven (40%) did not identify alternative locations in CDs with lower BTP ratios (Article 6.53 [c]). The statements relating to these sitings were submitted by DHS in 2017 and 2018. According to DHS officials, the agency began providing additional information in response to this requirement for statements submitted after Spring 2018.

For the remaining 11 statements, alternative sites in CDs with lower BTP ratios were identified but rejected by the proposing agency for various reasons, including: operating the site would be too costly, the proposed building was not viable for the intended use, and lack of proximity to transportation or community supports. The CDs for the 18 facilities already had several shelters before the new facilities were sited. For example, a shelter was sited in Bronx CD 6 which increased the number of existing shelters to 24. Auditors found no evidence that discussions were held with elected officials representing the affected communities regarding the reasons for rejecting alternative sites.

Community Boards Not Informed of Pending Article 9 Submissions or Provided an Opportunity to Meet Prior to Submissions

According to Article 4.2(b) of the Fair Share Guide, affected community boards must be notified of proposed actions outlined in Article 9 Statements before the presenting agency submits those statements to the Mayor's Office and DCP. The Guide also states that if the Citywide Statement of Needs (SON) has not specified the community district, the presenting agency must notify the community board where the site is ultimately to be located and offer to meet with the board (or a committee or designated individual) before the agency takes final action. This requirement exists to ensure questions and concerns from the community are addressed.

Twenty-four of the 28 sampled Article 9 Statements analyzed by the auditors contained a declaration indicating the date the community board was first notified.¹² However, auditors found no evidence in 14 of the 24 statements that the boards were notified before the statements were submitted. The supporting documentation submitted with the related Article 9 statements

¹² The remaining three statements did not indicate when the boards were first notified of the facility siting. Therefore, the auditors could not determine the timeframe for this communication.

contained no evidence (e.g., emails, letters) that the presenting agencies notified elected and community representatives before submitting the statements. The Fair Share Guide states that the submitting agency should keep a record of all contacts. Auditors found the minutes on a community board’s website for one site and the Mayor’s Office provided documentation (e.g., minutes, agenda, notification letters) for nine other sites to indicate that the affected community boards were notified of the proposed sitings. No evidence was provided for the remaining 14 sites.

Eight of the 9 notifications provided by the Mayor’s Office were for sitings that took place after December 31, 2021, when NYC Administrative Code, Section 21-324 took effect. This measure required that DHS establish a notification process for new homeless shelters (other than short-term emergency homeless shelters), which included holding at least one public information session.

Communities Where Article 9 Sites Are Placed Are Not Identified in the Statement of Needs

According to Section 204 (a) of the City Charter, annual Citywide SONs must identify by agency and program all new City facilities and all significant expansions of facilities proposed during the next two fiscal years. Additionally, the “Contents” section of the SONs states that the proposed sites are to include anticipated property acquisitions or site selections funded in the City’s capital budget, as well as leases or contracts that would newly establish or significantly expand a facility.

The “Contents” section also states—and the City Charter requires—that these facilities be listed with the boroughs identified and the CD, if practical. However, none of the 166 shelter sites identified in the Article 9 Statements submitted by DHS during the scope period were listed in the SONs with the borough and CD identified. The SONs reviewed listed proposed shelter locations as “to be determined.” In addition, the SONs only identified six new DHS facility sitings—far short of the 166 shelter sitings during the scope period.

The lack of adequate oversight over the preparation and review of annual Citywide SONs resulted in incomplete information being presented to the public regarding new facilities. As a result, elected officials and the public are not provided sufficient notice to raise concerns before plans are finalized.

Article 9 Statements Are Not Centrally Tracked

While the Fair Share Criteria requires agencies to submit Article 9 Statements to the Mayor, there was no requirement or procedure during the audit scope period that these submissions be tracked centrally.

Neither DCP nor the Mayor’s Office tracked or maintained copies of all submissions of Article 9 Statements. Of the 28 Article 9 Statements initially received by auditors during the survey stage of the audit, 17 were from CPC and covered submissions during FYs 2018 and 2019. No statements were received from CPC for FYs 2020–2022.

While the Fair Share Criteria says that Article 9 Statements should be submitted to the Mayor, with copies sent to DCP and the affected Community Board and Borough President, the Criteria does not say what these parties should do with the statements. In addition, there are no previous policies or procedures outlining Article 9 submissions.

Following the auditors' request to the Mayor's Office in December 2022 for all Article 9 Statements submitted by agencies during FYs 2017–2022, the Law Department issued a “Fair Share Obligations and Updated Procedures” memo to City agencies, dated February 24, 2023. The memo requested that agencies produce all Article 9 Statements since January 1, 2017. The memo also indicated that going forward, each agency submitting an Article 9 Statement must email the statements to a designated Mayor's Office Fair Share email address and to the Director of DCP.

City Uses an Outdated Facility Beds-to-Population Ratio

According to the Fair Share Criteria, DCP must publish an annual index of the number of beds per thousand residents by type of residential facility and the total number in each community district. This index—the Beds to Population (BTP) ratio—is based on the number of beds in all City, State, federal, and private facilities in operation or approved for operation.

The Fair Share Guide states that “any community district whose ratio of facility beds to population, by type of residential facility, is among the 20 highest and exceeds the citywide ratio is considered to have a high ratio for that type.” As noted above, according to Section 6.53 of the Fair Share Criteria, sitings in community districts with a high ratio of residential facility beds to population are subject to additional considerations.

DCP officials confirmed that the agency had not created, updated, or published the beds-to-population ratios since 2015. Moreover, DCP did not make the 2015 *Report of Residential Facility Beds to Population Ratios* available to the public.

Since DCP does not publicly share the BTP ratios on its website, DCP officials indicated that agencies can reach out to request them from DCP. The auditors' review of the 28 Article 9 Statements provided found that all 28 cited outdated 2015 data, including some submitted in 2022, seven years later. Based on that data, 18 facilities were placed in CDs that were among the 20 CDs with the highest BTP ratios citywide.

According to DCP officials, DHS has raised privacy concerns about some facilities that house sensitive clients—for example, clients seeking shelter from abuse. Following the 2015 Report, DHS declined to provide bed capacity information, citing privacy and confidentiality concerns. However, the basis for these concerns is unclear. The data does not include addresses for any agency facilities.

Without updated BTP ratio data, agencies are unable to accurately determine whether the proposed siting is subject to additional required considerations, such as whether the facility would have a negative impact on neighborhood character, whether the site is well located for efficient service delivery, and whether there are any alternative sites in community districts with lower ratios.

Without access to current and accurate BTP ratio data, Community Boards and the public at large cannot evaluate the fairness of a proposed site or to make objective comparisons between community districts. This lack of transparency represents a significant departure from Fair Share's purpose and goals.

According to DCP, the U.S. Census Bureau updates the decennial population one time every ten years, and DCP plans to update the BTP ratio prior to 2025.

Fair Share Criteria Has Not Been Reevaluated Since 1995

As stated in the Fair Share Criteria, it is important to monitor and evaluate the effects of the principles and procedures. The Criteria called for DCP to perform an evaluation and report its findings to the Mayor and CPC within two years of the Criteria's adoption and periodically thereafter.

DCP conducted a review of the Fair Share process in 1995 and issued a report based on its evaluation. According to DCP officials, changes were made to improve the process as a result of the 1995 assessment; however, several deficiencies noted in that report have still not been resolved.

DCP's 1995 review cited confusion between the application of Sections 4.1(a) and 4.1(b) in a court case and stated that the Criteria, or the guidelines for applying them, required clarification. In addition, the report recommended amendments to the Fair Share Criteria, such as increasing the contract threshold to capture only those contracts that are large enough to establish a city facility. Further, the auditors' review identified a need for clarification in the Fair Share Guide and Criteria concerning the supporting documentation that should be submitted with Article 9 Statements, and suggests that examples be included of what "adversely affected" means when facilities are being cited in an already concentrated area.

The 1995 DCP report further states that the siting process is continually evolving and can be improved in many respects, and that it would likely need to be adjusted again as more is learned. The report also recommended that the Fair Share Criteria should be revised. However, the Criteria has not been updated and no further evaluations have since been conducted.

The New York City Comptroller has pointed out the need to reevaluate and modify the Criteria in the past. A 2013 report issued by the Comptroller's Office, *Down and Out: How New York City Places its Homeless Shelters*, found that a systematic, Citywide analysis of Fair Share is lacking, therefore making it difficult to gauge the effectiveness of the Criteria in meeting its intended goals.

When asked, the Mayor's Office indicated that it has not attempted to reevaluate or update the Fair Share Criteria and stated that it is not aware of any attempts made by previous administrations. DCP officials did not respond to auditors' query about whether it plans to do so in future.

Without periodic reviews and modifications and updates, it is likely that the Fair Share Criteria will continue to be applied ambiguously and current processes will not be improved to prevent the inequitable siting of facilities.

Recommendations

To address the abovementioned findings, the auditors propose that DCP, CPC, and the Mayor's Office:

1. Identify a central body with responsibility for enforcing compliance with Fair Share Criteria—including the submission of all required Article 9 Statements and timely notifications of CBs of those submissions—by all City agencies for all facility types.

Mayor's Response: The Mayor's Office partially agreed with this recommendation, stating that it already does more than required under the Framework and more than the prior administration. The Mayor's Office also stated that it developed a centralized tracking system for the submission of Article 9 statements.

Auditor Comment: While the auditors acknowledge recent improvements made in response to the audit, we renew our recommendation that a central party be identified to enforce compliance with the Fair Share Criteria, including the submission of Article 9 Statements. The audit found many areas of non-compliance, and this remains of particular concern where sitings are planned in neighborhoods with high BTP ratios.

2. Establish a monitoring program to ensure all Article 4, 5, 6, and 9 requirements are met.

Mayor's Response: The Mayor's Office partially agreed with this recommendation, asserting that Article 4, 5, and 6 requirements are met through the existing ULURP process, and referring to the centralized tracking of Article 9 statements.

Auditor Comment: We refer to the Auditor Comment above and note that centralized tracking is not the same as monitoring to ensure compliance—tracking and cataloguing Article 9 Statements will not ensure compliance with Articles 4, 5, 6, or 9, and we therefore urge greater oversight over this process.

3. Publish an updated Fair Share Criteria and Guide to address areas of ambiguity identified in this report, to specify required supporting documentation to be included with submissions, and to establish clear and consistent procedures that will ensure fair distribution of City facilities among communities.

DCP Response: DCP agreed with this recommendation, noting that recommendations 3 and 6 will be addressed together, pending additional resources being provided to undertake a comprehensive re-evaluation.

4. Ensure that the SONs include all new sitings, including contracts that result in the opening of new facilities, and identify all required information, including communities, on all planned City facilities, when provided.

DCP Response: DCP disagreed with this recommendation stating that "it would require agencies to delay identifying and sharing information about proposed new facilities." DCP also contends that SONs provide updated information as it becomes available.

Auditor Comment: The auditors urge DCP to reconsider this recommendation, especially in regard to contracted facilities. None of the Article 9 statement facilities were listed in the SON, which limits transparency and the opportunity for community input.

5. DCP should immediately and regularly update the beds-to-population ratio and publish the data on its website so that it is readily available to agencies and to all stakeholders, including members of the public.

DCP Response: DCP agreed with this recommendation and has committed to update the BTP ratio based on recently released Census Bureau data.

6. DCP should expeditiously conduct a new evaluation of the Fair Share Criteria to identify additional areas for improvement.

DCP Response: DCP agreed with this recommendation, as noted under recommendation 3.

Recommendations Follow-up

Follow-up will be conducted periodically to determine the implementation status of each recommendation contained in this report. Status updates are reported in the Audit Recommendations Tracker available here: <https://comptroller.nyc.gov/services/for-the-public/audit/audit-recommendations-tracker/>

Scope and Methodology

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). GAGAS requires that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions within the context of our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope was Fiscal Years 2018 through 2022.

The auditors requested DCP, CPC, and the Mayor's Office's written policies and procedures pertaining to the Fair Share Criteria, as well as any written policies, procedures and guidance on Fair Share processes provided to other City agencies.

In order to obtain a general understanding of the operations within DCP, CPC, and the Mayor's Office and the responsibilities of the agencies' personnel, the auditors conducted interviews with DCP's Land Use Review Division's Senior Manager for Facilities; Senior Director of Land Use Review and the General Counsel. In addition, the auditors conducted interviews with DCP's Capital Planning Division's Chief Operating Officer; Associate Staff Analyst and Program Manager. Further, the audit team interviewed Mayor's Office of Contract Services' Deputy Chief of Staff and General Counsel. In addition, the auditors met with the Mayor's Office's Chief Strategy Officer; Deputy Chief of Staff to the Mayor; and Executive Director of Land Use. Written confirmations of key information discussed during the interviews was obtained.

To determine the responsibilities of DCP, CPC, and the Mayor's Office with regard to oversight and monitoring of New York City's agencies' compliance with the Fair Share Criteria, the auditors reviewed and, where applicable, used as audit criteria the following documents:

- "Criteria for the Location of City Facilities" (Adopted by the New York City Planning Commission on December 3, 1990);
- *Fair Share Criteria: A Guide for City Agencies* (Revised in Spring of 1998);
- Rules Implementation Memorandum #75: Fair Share Related Procurement Procedures;
- November 29, 1999 Amendment to Rules Implementation Memorandum #75;
- New York City Charter: Chapter 8: City Planning:
 - Sections 195: Acquisitions of office space,
 - Section 197 (c): Uniform land use review procedure,
 - Section 203: Criteria for location of city facilities,
 - Section 204: Citywide statement of needs.
- The Rules of the City of New York, Title 62: City Planning, Chapter 2: Uniform Land Use Review Procedure (ULURP) and Appendix A to Title 62.
- The New York City Comptroller's 2013 report, *Down and Out: How New York City Places its Homeless Shelters*.
- *Fair Share, An Assessment of New York City's Facility Siting Process*.

- *Fair Share Obligations and Updated Procedures* issued by the Law Department.

The auditors received a list of Zoning Application Portal (ZAP) land use Fair Share applications with milestone data from DCP.¹³ The list was received in an Excel format and was titled "Comptroller Request 01042023_Projects subject to Fair Share FY2018-2022.xls". The list contained 366 records of land use applications for actions subject to Fair Share for the period of Fiscal Years 2018 through 2022.¹⁴ ¹⁵ The auditors reviewed the listing and determined that the 366 application records were represented by 60 unique project IDs.

To assess the reliability of the computer-processed data received from DCP, the auditors downloaded a list of 70 land use applications subject to Fair Share from ZAP for the period of Calendar Years 2017 through 2023.¹⁶ Next, in order to match the two lists, the audit team used the Audit Command Language (ACL) JOIN command. All 60 application records from DCP's list matched the records on the list of 70 records downloaded by the audit team from ZAP. Ten were unmatched because they were outside of the audit scope. In addition, using ACL, the audit team tested whether the data provided by DCP was within the audit scope.

To determine whether DCP, CPC, and the Mayor's Office established adequate oversight of the City agencies' compliance with the provisions of the Fair Share Criteria, the audit team randomly selected a sample of 10 ZAP ULURP applications¹⁷ subject to Fair Share. Next, the auditors obtained supporting materials for the 10 applications including Fair Share analyses from DCP's Zoning Application Portal. In addition, the auditors obtained 28 Article 9 Statements in a PDF format. The auditors reviewed the Fair Share analyses for the 10 ULURP applications and the 28

¹³ Project milestones for each application record included multiple milestones such as City Council Review; CPC Public Meeting; Mayoral Veto; Project Completed; Borough President and Community Board Referrals etc. As a result, the number of unique applications was lower than the number of records contained on the list.

¹⁴ ULURP and Non-ULURP actions that are subject to the Fair Share Criteria include Office Space Acquisitions (Leases) (PX) (Non-ULURP), Combination Acquisition and Site Selection by the City (PC) (ULURP) and Site Selection (City Facility) (PS)(ULURP).

¹⁵ According to DCP, land use applications filed after January 2021 were filed by City agencies online. The applications that were filed before January 2021 were completed on paper.

¹⁶ Due to the fact that land use application records contained in ZAP are based on Fiscal Year, the audit team downloaded the application data for the entire years of 2017 and 2023 to ensure that all projects within the audit scope were included on the list.

¹⁷ The list of 60 land use applications contained 37 applications subject to ULURP and 23 non-ULURP applications such as Office Space Acquisitions mandated by Section 195 of the City Charter. The audit team's research and the information obtained from walkthroughs with DCP's personnel showed that non-ULURP office space actions are subject to Fair Share Criteria but do not represent an overconcentration concern for New York City neighborhoods as they mostly serve as administrative facilities. In addition, DCAS serves as the applicant for office space acquisitions, which makes the entire process more standardized. Due to the low risk of non-compliance, the audit team excluded 23 non-ULURP applications from the population for the random testing.

Article 9 Statements and compared them against applicable Fair Share Criteria articles including Article 4, Article 5, Article 6, and Article 9.¹⁸

The auditors reviewed an additional 281 documents submitted by the Mayor's Office in response to a request for Article 9 Statements for the scope period. The auditors determined that 142 were in scope Article 9 Statements, 72 were outside of the scope, 49 were duplicates, 17 were previously submitted and one was a public hearing calendar, not an Article 9 Statement.

To determine whether DCP and the Mayor's Office comply with the City Charter, Section 204, the auditors obtained a list of all projects subject to Fair Share that were proposed during the period of Fiscal Years 2018 through 2022 and the annual Citywide Statements of Needs (SONs) in a PDF format.¹⁹ Next, the audit team listed all new proposed and previously proposed projects contained in the PDF SONs in an Excel document. The audit team obtained a list of 567 proposed projects: 223 newly proposed projects and 344 previously proposed projects. Next, the audit team reviewed the listing of 567 projects to determine whether annual citywide SONs contained sufficient project location information and a specific siting criteria.

To determine whether DCP and the Mayor's Office adequately track the progress of the proposed projects, the auditors, using the list of 567 proposed projects, manually obtained a list of unique project names. Next, the auditors determined whether every unique project's progress and statuses were adequately tracked and documented in the SONs until those projects were either implemented or cancelled.

To determine whether DCP complied with the Fair Share Criteria adopted in December 1990 and monitored and evaluated the criteria on a periodic basis, the audit team interviewed DCP and Mayor's Offices officials and requested any updates or amendments to the Fair Share Criteria. In addition, the audit team conducted an online search regarding any possible amendments that were proposed and were in process of being implemented.

Although the results of sampling tests were not statistically projected to their respective populations, these results, together with the results of other audit procedures and tests, provide a reasonable basis for the assessment of City's effectiveness in ensuring compliance with Fair Share Criteria.

¹⁸ Articles 7 and 8 cover Office Space Acquisitions and Reducing or Closing of City Facilities, respectively. Given the fact that non-ULURP applications for Office Space Acquisitions were excluded from the testing of 10 ZAP applications and there were no Article 9 Statements for Reducing or Closing of City Facilities, the auditors did not test against these Articles.

¹⁹ The audit team reviewed annual citywide SONs for the following Fiscal Years: 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022, 2022-2023 and 2023-2024.

Appendix I

Fair Share Criteria Provisions	
FS Article 4: Criteria for Siting, Expanding (by at least 25% and 500 square feet or more) or Substantially Changing the Use of Existing City Facilities	
In applying Article 4.1 of FS Criteria, a participating agency must take into consideration:	
4.1 (a)	Compatibility of the new facility with existing facilities and programs, both city and non-city, in the immediate vicinity of the site.
4.1 (b)	Extent to which neighborhood character would be adversely affected by a concentration of city and /or non-city facilities
4.1 (c)	Suitability of the site to provide cost-effective delivery of the intended services. Consideration of sites shall include properties not under city ownership, unless the agency provides a written explanation of why it is not reasonable to do so in a particular instance.
4.1 (d)	Consistency with the locational and other specific criteria for the facility identified in the Statement of Needs or, if the facility is not listed in the Statement, in a subsequent submission to a Borough President.
4.1 (e)	Consistency with any plan adopted according to Section 197-a of the Charter (Citywide Statement of Needs).
In applying Article 4.2 of FS Criteria, a participating agency must take into consideration:	
4.2 (a)	Consider the Mayor's and Borough President's strategic policy statements, the Community Board's Statement of District Needs and Budget Priorities, and any published Department of City Planning land use plan for the area.
4.2 (b)	Consider any comments received from the Community Boards or Borough Presidents and any alternative sites proposed by a Borough President pursuant to Section 204(f) of the Charter, as well as any comments or recommendations received in any meetings, consultations or communications with the Community Boards or Borough Presidents. If the Statement of Needs has identified the community district where a proposed facility would be sited, then, upon the written request of the affected Community Board, the sponsoring agency should attend the Board's hearing on the Statement. If the community district is later identified, then the sponsoring agency shall at that point notify the Community Board and offer to meet with the board or its designee to discuss the proposed program.
FS Article 5: Siting or Expanding of Local/Neighborhood Facilities	
In applying Article 5 of FS Criteria, a participating agency must take into consideration:	

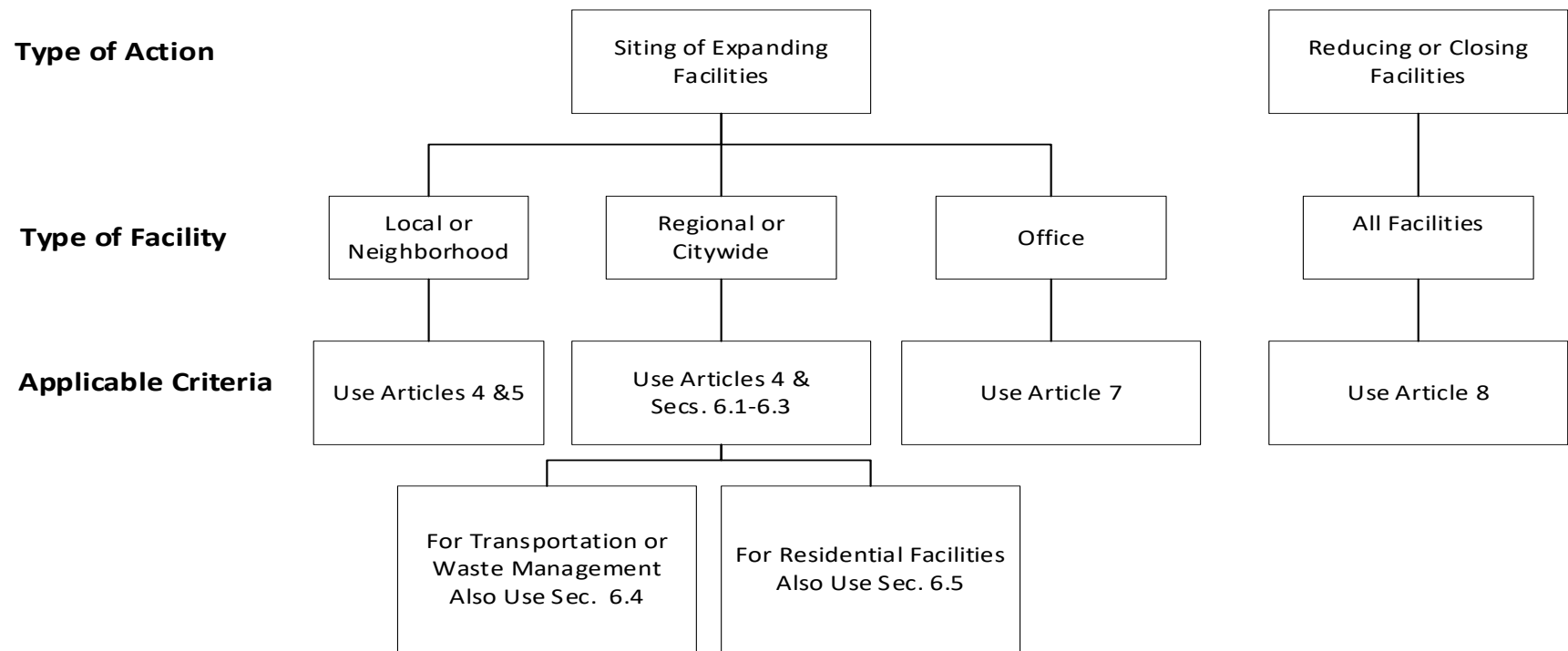
5.1 (a)	Need for the facility or expansion in the community or local service delivery district. The sponsoring agency should prepare an analysis which identifies the conditions or characteristics that indicate need within a local area (e.g., infant mortality rates, facility utilization rates, emergency response time, parkland/population ratios) and which assesses relative needs among communities for the service provided by the facility. New or expanded facilities should, wherever possible, be located in areas with low ratios of service supply to service demand.
5.1 (b)	Accessibility of the site to those it is intended to serve.
5.2	A community board may choose to designate or establish a committee to monitor selected local facilities after siting approval pursuant to the criteria. Following site selection and approval for such a facility, the sponsoring agency and community board shall jointly establish a mutually acceptable procedure by which the agency periodically reports to the committee regarding the plans and procedures that may affect the compatibility of the facility with the surrounding community, and responds to community concerns.
FS Article 6: For Siting or Expanding Regional/Citywide Facilities	
In applying Article 6.1 of FS Criteria, a participating agency must take into consideration:	
6.1 (a)	Need for the facility or expansion. Need shall be established in a citywide or borough-wide service plan or, as applicable, by inclusion in the city's ten-year capital strategy, four-year capital program, or other analyses of service needs.
6.1 (b)	Distribution of similar facilities throughout the city. To promote the fair geographic distribution of facilities, the sponsoring agency should examine the distribution among the boroughs of existing and proposed facilities, both city and non-city, that provide similar services, in addition to the availability of appropriately zoned sites.
6.1 (c)	Size of the facility. To lessen local impacts and increase broad distribution of facilities, the new facility or expansion should not exceed the minimum size necessary to achieve efficient and cost effective delivery of services to meet existing and projected needs.
6.1 (d)	Adequacy of the streets and transit to handle the volume and frequency of traffic generated by the facility.
6.2	Where practicable, the Mayor may initiate and sponsor a consensus building process to determine the location of a proposed regional facility. A Borough President may submit a written request for such a process if the request is made within 90 days of the publication of the Statement of Needs or, if the facility is not listed in the Statement, within 30 days of a subsequent submission to the Borough President.
6.3	Upon the request of the borough president and/ or the community board, a sponsoring agency and community board shall establish a facility monitoring committee, or designate an existing community board committee, to monitor a facility following selection and approval of its site. The agency shall inform the committee of plans and procedures that may affect the compatibility of the facility with the surrounding community. Once the facility is constructed, the sponsoring agency shall meet with the committee according to a schedule established by the committee and agency to report on the status of those plans and procedures and to respond to community concerns. The committee may also submit reports to the agency head addressing outstanding issues. The agency head shall respond to the committee's report within 45 days and shall identify the actions, if any, that the agency plans in response to such concerns.

FS Article 6.4: Transportation and Waste Management Facilities (also Article 4 and Sections 6.1, 6.2 and 6.3)	
In applying Article 6.4 of FS Criteria, a participating agency must take into consideration:	
6.4.1	The proposed site should be optimally located to promote effective service delivery in that any alternative site actively considered by the sponsoring agency or identified pursuant to Section 204(f) of the Charter (Citywide Statement of Needs) would add significantly to the cost of constructing or operating the facility or would significantly impair effective service delivery.
6.4.2	In order to avoid aggregate noise, odor, or air quality impacts on adjacent residential areas, the sponsoring agency and the City Planning Commission, in its review of the proposal, shall take into consideration the number and proximity of existing city and non-city facilities, situated within approximately a one-half mile radius of the proposed site, which have similar environmental impacts.
FS Article 6.5: Residential facilities	
In applying Article 6.5 of FS Criteria, a participating agency must take into consideration:	
6.5.1	Undue concentration or clustering of city and non-city facilities providing similar services or serving a similar population should be avoided in residential areas.
6.5.2	Necessary support services for the facility and its residents should be available and provided.
6.5.3	In community districts with a high ratio of residential facility beds to population, the proposed siting shall be subject to the following additional considerations: The three criteria (a, b and c) in Section 6.53 apply only in community districts with a high ratio of facility beds to population.
6.53 (a)	Whether the facility, in combination with other similar city and non-city facilities within a defined area surrounding the site (approximately a half-mile radius, adjusted for significant physical boundaries), would have a significant cumulative negative impact on neighborhood character.
6.53 (b)	Whether the site is well located for efficient service delivery.
6.53 (c)	Whether any alternative sites actively considered by the sponsoring agency or identified pursuant to Section 204(f) of the Charter which are in community districts with lower ratios of residential facility beds to population than the citywide average would add significantly to the cost of constructing or operating the facility or would impair service delivery.
FS: Article 7: Siting or expanding administrative offices and data processing facilities	
In applying Article 7 of FS Criteria, a participating agency must take into consideration:	
7.1 (a)	Suitability of the site to provide cost-effective operations.
7.1 (b)	Suitability of the site for operational efficiency, taking into consideration its accessibility to staff, the public and/or other sectors of city government.
7.1 (c)	Consistency with the locational and other specific criteria for the facility stated in the Statement of Needs.
7.1 (d)	Whether the facility can be located so as to support development and revitalization of the city's regional business districts without constraining operational efficiency.

FS: Article 8: for closing and reducing facilities. (Reducing size of facility by 25% or more)	
In applying Article 8 of FS Criteria, a participating agency must take into consideration:	
8.1 (a) Local and regional facilities	The extent to which the closing or reduction would create or significantly increase any existing imbalance among communities of service levels relative to need. Wherever possible such actions should be proposed for areas with high ratios of service supply to service demand.
8.1 (b)	Consistency with the specific criteria for selecting the facility for closure or reduction as identified in the Statement of Needs.
8.2	In proposing facility closings or reductions, the sponsoring agency shall consult with the affected Community Board(s) and Borough President about the alternatives within the district or borough, if any, for achieving the planned reduction and the measures to be taken to ensure adequate levels of service.
FS: Article 9: Actions not Subject to ULURP and CPC review Including Contract That Result in Opening or Significantly Expanding City Facility	
9	Actions not subject to Planning Commission review but subject to the fair share criteria must be reported, following the provisions of Article 9 of the criteria. These actions include: closings or significant reductions in existing facilities, significant expansions that enlarge a facility without enlarging the site, some new facilities or changes in use that do not require ULURP review, and contracts with service providers that result in opening or significantly expanding a facility defined as a "city facility" in the criteria. (See Article 3 of the Criteria for definitions of "significant reduction," "significant expansion," and "city facility."). In these cases where there is no Planning Commission hearing, Article 9 of the criteria requires the agency to send a statement to the Mayor reporting on its application of the criteria. The statement must explain how the criteria were applied and any departures from the criteria, and it must give evidence of having considered comments from the community board and borough president.

Appendix II

Guide for Applying Fair Share Criteria



NOTE: Also use Article 9 for all actions that are not subject to City Planning Commission review

Appendix III

The following lists of typical neighborhood and regional facilities are illustrative and may not include all such facilities:

Local/Neighborhood Facilities	Regional/Citywide Facilities
Branch libraries	Courts (other than community courts)
Community cultural programs	Department of Health centers
Community health/mental health services	Income support centers
Community-based social programs	Maintenance/storage facilities
Day care centers	Museums, theatres, zoos, botanical gardens
Drop-off recycling centers	Regional non-residential substance abuse programs
Fire/EMS stations	Regional parks
Local non-residential substance abuse services	
Local parks	Transportation/Waste Management
Parking lots/ garages	Airports, heliports
Police precinct houses	Ferry terminals
Sanitation garages	Sewage treatment plants
Senior centers	Solid waste transfer/processing facilities
	Residential Facilities
	Group homes/halfway houses
	Hospices
	Nursing homes
	Prisons, jails, detention facilities
	Residential facilities for children
	Secure/non-secure youth detention
	Supportive temporary or transitional housing

Appendix IV

Borough	CD	Neighborhoods	Number of Article 9 Statements Received	Submitting Agency	Type(s) of Facilities	Did district have a high BTP ratio?	
						Yes	No
Manhattan	1	Battery Park City, Civic Center, Ellis Island, Governors Island, Liberty Island, South Street Seaport, Tribeca, Wall Street, World Trade Center	2	Department of Homeless Services	Shelter and Hotel Shelter	2	0
Manhattan	2	Greenwich Village, Hudson Square, Little Italy, NoHo, SoHo, South Village, West Village	3	Department of Homeless Services	Shelter and Hotel Shelter	0	3
Manhattan	3	Chinatown, East Village, Lower East Side, NoHo, Two Bridges	4	Department of Homeless Services	Shelter and Hotel Shelter	0	4
Manhattan	4	Chelsea, Clinton, Hudson Yards	3	Department of Homeless Services	Shelter and Hotel Shelter	3	0
Manhattan	5	Flatiron, Gramercy Park, Herald Square, Midtown, Midtown South, Murray Hill, Times Square, Union Square	3	Department of Homeless Services	Shelter and Hotel Shelter	3	0
Manhattan	6	Beekman Place, Gramercy Park, Murray Hill, Peter Cooper Village, Stuyvesant Town, Sutton Place, Tutor City, Turtle Bay	4	Department of Homeless Services	Shelter	0	4
Manhattan	7	Lincoln Square, Manhattan Valley, Upper West Side	3	Department of Homeless Services	Shelter	0	3
Manhattan	8	Carnegie Hill, Lenox Hill, Roosevelt Island, Upper East Side, Yorkville	0				
Manhattan	9	Hamilton Heights, Manhattanville, Morningside Heights, West Harlem	5	Department of Homeless Services	Shelter and Hotel Shelter	5	0
Manhattan	10	Central Harlem					
Manhattan	11	East Harlem, Harlem, Randall's Island Park, Wards Island Park	2	Department of Homeless Services	Shelter and Hotel Shelter	2	0
Manhattan	12	Inwood, Washington Heights	3	Department of Homeless Services	Shelter and Hotel Shelter	0	3
Bronx	1	Melrose, Mott Haven, Port Morris	8	Department of Homeless Services	Shelter and Hotel Shelter	8	0
Bronx	2	Hunts Point, Longwood	2	Department of Homeless Services	Shelter	0	2
Bronx	3	Claremont, Crotona Park East, Melrose, Morrisania	7	Department of Homeless Services	Shelter and Hotel Shelter	7	0
Bronx	4	Concourse, Concourse Village, East Concourse, Highbridge, Mount Eden	5	Department of Homeless Services and New York City Human Resources Administration	Shelter, Hotel Shelter, Affordable Housing	5	0
Bronx	5	Fordham, Morris Heights, Mount Hope, University Heights	6	Department of Homeless Services	Shelters and Non Secure	0	6

Borough	CD	Neighborhoods	Number of Article 9 Statements Received	Submitting Agency	Type(s) of Facilities	Did district have a high BTP ratio?	
						Yes	No
				and Administration for Children's Services	Detention Facility		
Bronx	6	Bathgate, Belmont, Bronx Park South, East Tremont, West Farms	3	Department of Homeless Services	Hotel Shelter and Safe Haven	3	0
Bronx	7	Bedford Park, Fordham, Kingsbridge Heights, Norwood, University Heights	3	Department of Homeless Services	Shelter	0	3
Bronx	8	Fieldston, Kingsbridge, Marble Hill, North Riverdale, Spuyten Duyvil	3	Department of Homeless Services	Shelter and Hotel Shelter	3	0
Bronx	9	Bronx River, Castle Hill, Clason Point, Harding Park, Parkchester, Soundview, Soundview-Bruckner, Unionport	6	Department of Homeless Services	Shelter	0	6
Bronx	10	City Island, Co-op City, Country Club, Edgewater Park, Pelham Park, Schuylerville, Throgs Neck, Westchester Square	0				
Bronx	11	Allerton, Bronxdale, Indian Village, Morris Park, Pelham Gardens, Pelham Parkway, Van Nest	1	Department of Homeless Services	Shelter	1	0
Bronx	12	Baychester, Eastchester, Edenwald, Olinville, Wakefield, Williamsbridge, Woodlawn	2	Department of Homeless Services	Shelter	0	2
Brooklyn	1	East Williamsburg, Greenpoint, Northside, Southside, Williamsburg	5	Department of Homeless Services	Shelter, Hotel Shelter, Safe Haven	0	5
Brooklyn	2	Boerum Hill, Brooklyn Heights, Clinton Hill, Downtown Brooklyn, DUMBO, Fort Greene, Fulton Ferry, Navy Yard, Vinegar Hill	4	Department of Homeless Services	Shelter	4	0
Brooklyn	3	Bedford Stuyvesant, Stuyvesant Heights, Tompkins Park North	2	Department of Homeless Services	Shelter and Hotel Shelter	2	0
Brooklyn	4	Bushwick	2	Department of Homeless Services	Shelter and Hotel Shelter	0	2
Brooklyn	5	Broadway Junction, City Line, Cypress Hills, East New York, Highland Park, New Lots, Spring Creek, Starrett City	11	Department of Homeless Services	Shelter and Hotel Shelter	0	11
Brooklyn	6	Carroll Gardens, Cobble Hill, Columbia St, Gowanus, Park Slope, Red Hook	5	Department of Homeless Services	Shelter and Hotel Shelter	0	5
Brooklyn	7	Sunset Park, Windsor Terrace	5	Department of Homeless Services	Shelter and Hotel Shelter	5	0
Brooklyn	8	Crown Heights, Prospect Heights, Weeksville	2	Department of Homeless Services and New York City	Shelter, Hotel Shelter, Affordable Housing	2	0

Borough	CD	Neighborhoods	Number of Article 9 Statements Received	Submitting Agency	Type(s) of Facilities	Did district have a high BTP ratio?	
						Yes	No
				Human Resources Administration			
Brooklyn	9	Crown Heights South, Prospect Lefferts Gardens, Wingate	0				
Brooklyn	10	Bay Ridge, Dyker Heights, Fort Hamilton	0				
Brooklyn	11	Bath Beach, Bensonhurst, Gravesend, Mapleton	0				
Brooklyn	12	Borough Park, Kensington, Ocean Parkway	1	Department of Homeless Services	Shelter	0	1
Brooklyn	13	Brighton Beach, Coney Island, Gravesend, Homecrest, Sea Gate, West Brighton	1	Department of Homeless Services	Shelter	0	1
Brooklyn	14	Ditmas Park, Flatbush, Manhattan Terrace, Midwood, Ocean Parkway, Prospect Park South	2	Department of Homeless Services	Shelter	0	2
Brooklyn	15	Gerritsen Beach, Gravesend, Homecrest, Kings Highway, Manhattan Beach, Plumb Beach, Sheepshead Bay	0				
Brooklyn	16	Broadway Junction, Brownsville, Ocean Hill	5	Department of Homeless Services	Hotel Shelter	5	0
Brooklyn	17	East Flatbush, Farragut, Flatbush, Northeast Flatbush, Remsen Village, Rugby, Erasmus	2	Department of Homeless Services	Shelter and Hotel Shelter	0	2
Brooklyn	18	Bergen Beach, Canarsie, Flatlands, Georgetown, Marine Park, Mill Basin, Mill Island, Paerdegat Basin	1	Department of Homeless Services	Shelter	0	1
Queens	1	Astoria, Astoria Heights, Queensbridge, Dutch Kills, Long Island City, Ravenswood, Rikers Island, Steinway	3	Department of Homeless Services	Shelter and Hotel Shelter	3	0
Queens	2	Blissville, Hunters Point, Long Island City, Sunnyside, Sunnyside Gardens, Woodside	3	Department of Homeless Services	Shelter and Hotel Shelter	0	3
Queens	3	East Elmhurst, Jackson Heights, North Corona	2	Department of Homeless Services	Shelter and Hotel Shelter	0	2
Queens	4	Corona, Corona Heights, Elmhurst, Lefrak City	3	Department of Homeless Services	Shelter and Hotel Shelter	0	3
Queens	5	Glendale, Maspeth, Middle Village, Ridgewood	2	Department of Homeless Services	Shelter	0	2
Queens	6	Forest Hills, Forest Hills Gardens, Rego Park	1	Department of Homeless Services	Shelter	0	1

Borough	CD	Neighborhoods	Number of Article 9 Statements Received	Submitting Agency	Type(s) of Facilities	Did district have a high BTP ratio?	
						Yes	No
Queens	7	Auburndale, Bay Terrace, Beechhurst, Clearview, College Point, Downtown Flushing, East Flushing, Flushing, Malba, Murray Hill, Queensboro Hill, Waldheim, Whitestone	3	Department of Homeless Services	Shelter and Hotel Shelter	0	3
Queens	8	Briarwood, Fresh Meadows, Hillcrest, Holliswood, Jamaica, Jamaica Estates, Jamaica Hills, Kew Gardens, Pomonok, Utopia	1	Department of Homeless Services	Shelter	0	1
Queens	9	Kew Gardens, Ozone Park, Richmond Hill, Woodhaven	2	Department of Homeless Services	Shelter and Hotel Shelter	0	2
Queens	10	Howard Beach, Lindenwood, Old Howard Beach, Ozone Park, South Ozone Park	3	Department of Homeless Services	Hotel Shelter	0	3
Queens	11	Auburndale, Bayside, Douglaston, Hollis Hills, Little Neck, Oakland Gardens	1	Department of Homeless Services	Shelter	0	1
Queens	12	Hollis, Jamaica, Jamaica Center, North Springfield Gardens, Rochdale, South Jamaica, St. Albans	6	Department of Homeless Services	Shelter and Hotel Shelter	0	6
Queens	13	Bellaire, Bellerose, Brookville, Cambria Heights, Floral Park, Glen Oaks, Laurelton, New Hyde Park, Queens Village, Rosedale, Springfield Gardens	5	Department of Homeless Services	Shelter and Hotel Shelter	0	5
Queens	14	Arverne, Bayswater, Belle Harbor, Breezy Point, Broad Channel, Edgemere, Far Rockaway, Hammels, Neponsit, Rockaway Park, The Rockaways, Roxbury, Seaside, Somerville	4	Department of Homeless Services	Shelter	4	0
Staten Island	1	Arlington, Castleton Corners, Clifton, Elm Park, Fox Hills, Graniteville, Grymes Hill, Howland Hook, Livingston, Mariner's Harbor, New Brighton, Old Place, Park Hill, Poet Ivory, Port Richmond, Randall Manor, Rosebank, Shore Acres, Silver Lake, St. George, Stapleton, Sunnyside, Tompkinsville, Ward Hill, West Brighton, West New Brighton, Westerleigh, Willowbrook	3	Department of Homeless Services	Shelter	0	3

Borough	CD	Neighborhoods	Number of Article 9 Statements Received	Submitting Agency	Type(s) of Facilities	Did district have a high BTP ratio?	
						Yes	No
Staten Island	2	Arrochar, Bloomfield, Bulls Head, Chelsea, Concord, Dongan Hills, Egbertville, Emerson Hill, Grant City, Grasmere, Heartland Village, Lighthouse Hill, Manor Heights, Midland Beach, New Dorp, New Dorp Beach, New Springville, Old Town, South Beach, Todt Hill, Travis, Willowbrook	1	Department of Homeless Services	Shelter	0	1
Staten Island	3	Annadale, Arden Heights, Bay Terrace, Butler Manor, Charleston, Eltingville, Fresh Kills, Great Kills, Greenridge, Huguenot, Oakwood, Oakwood Beach, Oakwood Heights, Pleasant Plains, Prince's Bay, Richmond Town, Richmond Valley, Rossville, Sandy Ground, Tottenville, Woodrow	1	Department of Sanitation	Sanitation Garage	0	1*
*Represents an Article 9 Statement where the beds to population is not applicable because it is not a residential facility.						67	103
						170	

Appendix V

Borough	Community District	Neighborhoods	Section 195	ULURP	Article 9 Statement	Total
Brooklyn	1	East Williamsburg, Greenpoint, Northside, Southside, Williamsburg		1	5	6
Brooklyn	2	Boerum Hill, Brooklyn Heights, Clinton Hill, Downtown Brooklyn, DUMBO, Fort Greene, Fulton Ferry, Navy Yard, Vinegar Hill	3		4	7
Brooklyn	3	Beford Stuyvesant, Stuyvesant Heights, Tompkins Park North			2	2
Brooklyn	4	Bushwick			2	2
Brooklyn	5	Broadway Junction, City Line, Cypress Hills, East New York, Highland Park, New Lots, Spring Creek, Starrett City		2	11	13
Brooklyn	6	Carroll Gardens, Cobble Hill, Columbia St, Gowanus, Park Slope, Red Hook		3	5	8
Brooklyn	7	Sunset Park, Windsor Terrace			5	5
Brooklyn	8	Crown Heights, Prospect Heights, Weeksville			2	2
Brooklyn	9	Crown Heights South, Prospect Lefferts Gardens, Wingate				
Brooklyn	10	Bay Ridge, Dyker Heights, Fort Hamilton				
Brooklyn	11	Bath Beach, Bensonhurst, Gravesend, Mapleton				
Brooklyn	12	Borough Park, Kensington, Ocean Parkway			1	1
Brooklyn	13	Brighton Beach, Coney Island, Gravesend, Homecrest, Sea Gate, West Brighton	1		1	2
Brooklyn	14	Ditmas Park, Flatbush, Manhattan Terrace, Midwood, Ocean Parkway, Prospect Park South			2	2
Brooklyn	15	Gerritsen Beach, Gravesend, Homecrest, Kings Highway, Manhattan Beach, Plumb Beach, Sheepshead Bay				
Brooklyn	16	Broadway Junction, Brownsville, Ocean Hill	1	1	5	7
Brooklyn	17	East Flatbush, Farragut, Flatbush, Northeast Flatbush, Remsen Village, Rugby, Erasmus	1		2	3

Borough	Community District	Neighborhoods	Section 195	ULURP	Article 9 Statement	Total
Brooklyn	18	Bergen Beach, Canarsie, Flatlands, Georgetown, Marine Park, Mill Basin, Mill Island, Paerdegat Basin		1	1	2
Bronx	1	Melrose, Mott Haven, Port Morris			8	8
Bronx	2	Hunts Point, Longwood			2	2
Bronx	3	Claremont, Crotona Park East, Melrose, Morrisania			7	7
Bronx	4	Concourse, Concourse Village, East Concourse, Highbridge, Mount Eden	1	1	5	7
Bronx	5	Fordham, Morris Heights, Mount Hope, University Heights			6	6
Bronx	6	Bathgate, Belmont, Bronx Park South, East Tremont, West Farms			3	3
Bronx	7	Bedford Park, Fordham, Kingsbridge Heights, Norwood, University Heights		1	3	4
Bronx	8	Fieldston, Kingsbridge, Marble Hill, North Riverdale, Spuyten Duyvil	2	1	3	6
Bronx	9	Bronx River, Castle Hill, Clason Point, Harding Park, Parkchester, Soundview, Soundview-Bruckner, Unionport		2	6	8
Bronx	10	City Island, Co-op City, Country Club, Edgewater Park, Pelham Park, Schuylerville, Throgs Neck, Westchester Square	2	1		3
Bronx	11	Allerton, Bronxdale, Indian Village, Morris Park, Pelham Gardens, Pelham Parkway, Van Nest			1	1
Bronx	12	Baychester, Eastchester, Edenwald, Olinville, Wakefield, Williamsbridge, Woodlawn			2	2
Manhattan	1	Battery Park City, Civic Center, Ellis Island, Governors Island, Liberty Island, South Street Seaport, Tribeca, Wall Street, World Trade Center	3		2	5
Manhattan	2	Greenwich Village, Hudson Square, Little Italy, NoHo, SoHo, South Village, West Village			3	3
Manhattan	3	Chinatown, East Village, Lower east Side, NoHo, Two Bridges			4	4
Manhattan	4	Chelsea, Clinton, Hudson Yards	1	2	3	6
Manhattan	5	Flatiron, Gramercy Park, Herald Square, Midtown, Midtown South, Murray Hill, Times Square, Union Square		1	3	4
Manhattan	6	Beekman Place, Gramercy Park, Murray Hill, Peter Cooper Village, Stuyvesant Town, Sutton Place, Tutor City, Turtle Bay	1	1	4	6
Manhattan	7	Lincoln Square, Manhattan Valley, Upper West Side			3	3

Borough	Community District	Neighborhoods	Section 195	ULURP	Article 9 Statement	Total
Manhattan	8	Carnegie Hill, Lenox Hill, Roosevelt Island, Upper East Side, Yorkville				
Manhattan	9	Hamilton Heights, Manhattanville, Morningside Heights, West Harlem		1	5	6
Manhattan	10	Central Harlem		1		1
Manhattan	11	East Harlem, Harlem, Randall's Island Park, Wards Island Park			2	2



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

August 11, 2023

Maura Hayes-Chaffe
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Mayor's Office Response to the New York City Comptroller's Audit Report on New York City's Compliance with Fair Share

The Mayor's Office thanks the Office of the New York City Comptroller for the opportunity to respond to the draft Audit Report on New York City's Compliance with Fair Share, dated July 28, 2023 (the "Audit Report"). We are proud of the work we have done to ensure compliance with both the letter and the spirit of the City's Fair Share Criteria.

The Audit Report states accurately that Fair Share Criteria do not require that the City develop and maintain a centralized tracking system for Fair Share Article 9 statements, nor do the criteria prescribe a process for review of those statements. Nevertheless, the current Mayoral administration, whose tenure began only at the end of the audit scope period, has issued guidance to agencies for creating Article 9 statements, made every effort to develop a catalog of previously created statements, and created a central tracking system. In February 2023, at the request of the Mayor's Office, the Law Department distributed a memorandum directing City agencies to produce copies of all Article 9 statements submitted since January 1, 2017 (the "February Memorandum"). Further, the February Memorandum reiterated that agencies must submit Article 9 statements to the Mayor's Office, the Director of City Planning, the Speaker of the City Council, and to each affected Community Board, Borough President and City Council member. Subsequently, the Mayor's Office began cataloging all Article 9 statements submitted in response to the February Memorandum. While the Fair Share Criteria do not obligate it, the Mayor's Office has generated a cumulative database with Article 9 statements from January 1, 2017 to present day.

Although the Fair Share framework simply requires agencies to provide Article 9 statements to the Mayor, this administration has undertaken additional efforts to ensure that the City complies with the spirit of the Fair Share framework, beyond what is required in the law. As was explained to the auditors, since early in this Mayoral administration, members of the Mayor's Chief of Staff Team and Deputy Mayor for Health and Human Services Team meet biweekly with the Department of Homeless Services ("DHS"). At these biweekly meetings, DHS presents its proposals for new sites and shows how existing and proposed sites are distributed across the City. The Mayor's Office examines these proposals to consider a number of different factors, including factors specified in section 6.53 of the Fair Share Criteria, such as whether the facility would have significant cumulative negative impact on a neighborhood and whether the site is a proper location for efficiently delivering services. This process effectively evaluates proposals for virtually all Article 9 statements.

Although the Fair Share Criteria do not require the aforementioned measures, the Mayor's Office has undertaken them to help preserve "the equitable distribution of City facilities."

Please note that although the Department of Homeless Services was not an auditee, they were subject to much of the report's analysis. As such, we have included below their responses to the Audit Report.

Response to Recommendations:

Recommendation 1: Identify a central body with responsibility for enforcing compliance with Fair Share Criteria—including the submission of all required Article 9 statements and timely notifications of CBs of those submissions—by all City agencies for all facility types.

Response: The Mayor's Office partially agrees with this recommendation as it has already created and issued guidance to agencies and developed a centralized tracking system for the submission of Article 9 statements.

Recommendation 2: Establish a monitoring program to ensure all Article 4, 5, 6 and 9 requirements are met.

Response: The Mayor's Office partially agrees with this recommendation as Article 4, 5 and 6 requirements are met through the existing ULURP process. Article 9 statements are tracked through the process mentioned in the response to recommendation 1.

Recommendation 3: Publish updated Fair Share Criteria and Guide to address areas of ambiguity identified in this report, to specify required supporting documentation to be included with submissions, and to establish clear and consistent procedures that will ensure fair distribution of City facilities among communities.

Response: Please see DCP's response.

Recommendation 4: Ensure that the SONs include all new sitings, including contracts that result in the opening of new facilities, and identify all required information, including communities, on all planned City facilities, when provided.

Response: Please see DCP's response.

Recommendation 5: DCP should immediately and regularly update the beds-to-population ratio and publish the data on its website so that it is readily available to agencies and to all stakeholders, including members of the public.

Response: Please see DCP's response.

Recommendation 6: DCP should expeditiously conduct a new evaluation of the Fair Share Criteria to identify additional areas for improvement.

Response: Please see DCP's response.

Sincerely yours,



Camille Joseph Varlack

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August 11, 2023

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New York, NY 10007

**Re: DSS/DHS Response to the NYCC Audit Report on New York City's
Compliance with Fair Share**

Dear Ms. Hayes-Chaffe:

We have received the draft report for the New York City Comptroller's ("NYCC") Audit of NYC's compliance with Fair Share. Please find enclosed our Agency response. The NYC Department of Homeless Services ("DHS") appreciates the NYCC's attention to the Fair Share Compliance process. However, the report includes multiple inaccuracies which we highlight and seek to correct below.

Initially, DHS highlights that it provided the vast majority of Article 9 statements for the NYCC's Audit because DHS is responsible for the vast majority of Article 9 statements provided to the Mayor's Office and, as a result, has the most comprehensive inventory of these statements which reflect DHS's consistent robust analysis and compliance with the Fair Share Criteria. DHS submitted twenty-six of the twenty-eight Article 9 statements sampled for the NYCC's Audit. As such, even though DHS was not an official auditee of this audit, DHS addresses below particular findings in the Audit report that inaccurately describe DHS's Article 9 statements.

I. DHS Performs Required Analyses in its Article 9 Statements.

DHS strongly disagrees with the NYCC's finding that its Article 9 statements did not demonstrate an assessment or analysis of facility concentration, as required by Articles 4.1(b) and 6.51, or of the proposed facility's impact on the neighborhood, as required

by Article 6.53. All of DHS's Article 9 statements discuss, in detail, the nature of proposed facilities, describe how each particular provider will operate a proposed facility, address the potential negative impacts on the neighborhood, and propose measures to mitigate those impacts.

As acknowledged by NYCC, the Fair Share Criteria do not identify parameters for the acceptable number of facilities within a half-mile radius of a proposed facility and, further, do not define what is "a high concentration of facilities" in a given area. The "Fair Share Criteria: A Guide for City Agencies" ("Fair Share Guide") provides that "an adverse concentration...already present does not compel a conclusion that adding the new facility would worsen existing problems."¹ Instead, the Fair Share Guide suggests that, among other things, a Fair Share statement should include a discussion of the nature of the proposed facility and options for mitigating possible adverse effects, if any.

DHS's Article 9 statements do contain the suggested discussion. DHS's Article 9 statements include a discussion of the concentration of facilities within the studied area. DHS's Article 9 statements also include a detailed discussion of the measures implemented at each proposed facility, including a description of the security and social services provided on-site, to mitigate any possible negative impact upon the surrounding community. DHS therefore strongly disputes NYCC's finding that its Article 9 statements demonstrate no assessment or analysis of facility concentration or neighborhood impact.

II. DHS Does Not Misrepresent the Number of Existing Facilities.

Although the NYCC Audit finds that DHS's Article 9 statements misrepresent the number of existing facilities within a half-mile radius of a proposed facility, this finding does not accurately represent DHS's Article 9 statements.

Some facilities listed in the appendices of DHS's Article 9 statements are single facilities that should be listed as such. For instance, the 30th Street Men's Intake Center, where clients apply and are assessed for shelter, is listed as four separate facilities in appendices, even though the Intake Center is a singular facility operating out of a singular address.² The discussion of the Intake Center as a singular facility in

¹ Fair Share Guide at 17.

² These facilities are: (1) 30th Street Fast Track; (2) 30th Street Men's Assessment; (3) 30th Street Men's Shelter; and, (4) 30th Street Diversion Unit.

the Article 9 statement narrative is therefore not inconsistent with its listing as multiple facilities in appendices.

In addition, and as noted in the Audit report, there are instances in which the appendices: (1) inaccurately list a single facility that operates across multiple, adjacent buildings as distinct and separate facilities; and, (2) list cluster sites that had already closed or were slated for imminent closure upon publication of DHS's Article 9 statement.

III. DHS Notifies Officials of Proposed Sitings as Required by the Criteria and the Fair Share Guide.

Finally, DHS disputes the NYCC Audit's finding that DHS failed to comply with the Fair Share Criteria because it does not attach communications with community boards to its Article 9 statements. The NYCC Audit alleges that DHS failed to notify community boards of proposed sitings and failed to provide community boards an opportunity to meet with DHS prior to submission of Article 9 statements. The NYCC Audit's allegation is based upon the fact that DHS did not attach documentary proof of its community board correspondence to its Article 9 statements. Neither the Fair Share Criteria nor the Fair Share Guide require an agency to attach such documentation. The Fair Share Guide advises that a mere summary of the exchange suffices.³ DHS, consistent with the Criteria and Guide, provides such a summary in its Article 9 statements. Indeed, in twenty-four of the twenty-six Article 9 statements examined by the NYCC Audit, DHS included in its Article 9 statement the date on which it notified the community board of a proposed siting. Despite there being no obligation to provide documentary proof of communications with community boards, the NYCC Audit makes the inaccurate finding that DHS did not provide the community boards the opportunity to meet prior to the publication of an Article 9 statement.

The NYCC Audit similarly finds that DHS did not discuss its rejection of alternative sites for a proposed facility with elected officials. Neither the Fair Share Criteria nor the Fair Share Guide require such discussions with elected officials. Instead, consistent with the Criteria and Guide, DHS's Article 9 statements include a discussion of alternative sites considered for a proposed facility.

³ Fair Share Guide at 27.

We thank you for the opportunity to respond to this report.

Yours sincerely,

Molly W. Park

Molly W. Park
DSS Commissioner



DEPARTMENT OF CITY PLANNING
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August 11, 2023

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Re: Draft Audit Report on the City's Compliance with Fair Share

Dear Deputy Comptroller Hayes-Chaffe:

The Department of City Planning (DCP) appreciates the opportunity to respond to the Comptroller's draft audit report on the City's Compliance with Fair Share. As the agency responsible for adopting the Criteria for the Location of City Facilities, commonly referred to as the Fair Share Criteria, DCP takes seriously its obligation to ensure that the Fair Share Criteria are clear, fulfill their purpose, and serve the needs of the public and city agencies to site city facilities both equitably and efficiently. The draft audit report touches upon several aspects of Fair Share reviews that are outside DCP's responsibility and control.¹ DCP is responding only to those draft recommendations that relate to DCP.

By way of background, the Fair Share Criteria are intended to guide the siting of city facilities and further the fair distribution of both the benefits and burdens of city facilities among communities. The Criteria ask agencies to balance a number of factors in making siting decisions, including community needs for services, efficient and cost-effective agency delivery of those services, social and economic impacts of facilities on surrounding areas, and the broad geographic distribution of facilities. Together with the annual Citywide Statement of Needs (SON), the Criteria also seek to foster early agency consultation with affected communities and

¹ DCP has a limited role in the City's Fair Share process. The Criteria were originally adopted by the City Planning Commission, for which DCP acts as staff. To help agencies apply the Criteria, DCP issued a guide to the Fair Share Criteria ("Fair Share Criteria: A Guide for City Agencies") most recently updated in 1998 and assessed the Fair Share process ("Fair Share: An Assessment of New York City's Siting Process") in 1995. Agency sponsors of projects that require Fair Share analyses and are reviewed through the Uniform Land Use Review Procedure (ULURP) must include the completed analysis with their ULURP application. Agency sponsors of projects that require Fair Share analyses which do not undergo ULURP review must provide a copy of their completed Article 9 statement to DCP, among others. DCP also manages the annual Citywide Statement of Needs process.

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consideration of community concerns and comments. The Criteria do not mandate specific outcomes or require that particular factors be given specific weight. Rather, they establish a process for analysis and provide guidelines for agencies to consider Fair Share factors in their decision-making.

Consistent with the goal of Fair Share of making information more accessible to the public, DCP has taken great strides in recent years to improve the information available to communities and to ensure that applications put forward by city agencies and others are publicly available. DCP created the Zoning Application Portal (ZAP), which allows anyone to access information and documents, including Fair Share analyses, application materials, and environmental reviews, once project applications are filed with DCP – the earliest point in public review. DCP also created or improved a variety of other online tools, including a citywide zoning and land use map (ZoLa), population demographic data, an equitable development data explorer, and a comprehensive database of city facilities, to enable easy public access to demographic and agency operational information. To foster expanded choices in siting facilities, DCP worked with the City Council and communities to adopt zoning changes that opened large areas of the City to community facility uses. Finally, as mentioned below, DCP expanded the SON to make it more dynamic and useful to communities by including updates not only on all ongoing prior proposals but also with information on proposals omitted from earlier SONs. These strides in improving the transparency of projects coming before the City Planning Commission and in moving information online for the general public have vastly improved the public consultation process. DCP is committed to continuing these efforts.

Response to Draft Audit Recommendations:

Recommendation 3: Publish updated Fair Share Criteria and Guide to address areas of ambiguity identified in this report, to specify required supporting documentation to be included with submissions, and to establish clear and consistent procedures that will ensure fair distribution of City facilities among communities.

Recommendation 6: DCP should expeditiously conduct a new evaluation of the Fair Share Criteria to identify additional areas for improvement.

Response: DCP responds to these two recommendations together. DCP last formally reviewed and issued a report on the Fair Share process in 1995. DCP agrees that given the passage of time and the number of Fair Share analyses prepared in the ensuing years, DCP should again evaluate the Fair Share Criteria and Fair Share Guide. To properly conduct a comprehensive re-evaluation, DCP will require additional resources, which DCP will seek. DCP believes that any update of the Criteria and/or the Guide should be done at the same time, after that re-evaluation.

Recommendation 4: Ensure that the SONs include all new sitings, including contracts that result in the opening of new facilities, and identify all required information, including communities, on all planned City facilities, when provided.

Response: The SON identifies the new facilities that city agencies plan to site, and the existing facilities that agencies plan to close or significantly expand or shrink, during the next two years. The purpose of the SON is to inform communities of upcoming facility siting needs and the

August 11, 2023

criteria for locating those facilities and to provide communities an opportunity for input through community boards and borough presidents. The City generally seeks to provide information about facility needs early in the planning and siting process so that communities are appropriately informed, often before specific locations or other information is known. In this way, the SON gives the public a preview of what may come even if some information is not yet decided or available. DCP believes that the SON strikes the appropriate balance between transparency with communities and availability of information. If agencies were to wait for all information to be available about a proposed facility location or action before including the facility in the SON, communities would be deprived of information and unduly delayed in their ability to weigh in on agency proposals.

In managing the SON process, DCP tries to have the most accurate and up to date information as is possible. At the start of the annual SON process, DCP requests that agencies provide information on proposals for all city facilities required to be included in the SON, with specific information on things like the size, nature, location, public purpose of proposed facility actions and the criteria for choosing locations. DCP reviews information submitted by other agencies and follows up where necessary to fill in gaps and get as much specificity as possible. DCAS and DDC also review the report to ensure the list is accurate and to provide additional proposal details. Ultimately, however, it is the responsibility of each agency to provide as complete a facility list as possible.

The Charter recognizes that information may be developed, or facilities identified, after an SON is issued and the SON is structured to account for subsequent additions. Indeed, the Charter has a process for proceeding with land use review of new facilities that were not included in a previous SON. (See Charter § 204(e)). And since 2018, the appendix to each SON has contained updates on all prior proposals that are still being worked on and new proposals omitted from earlier SONs.

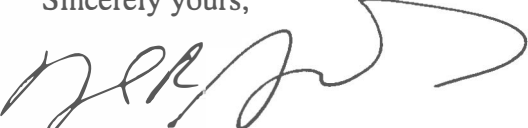
For these reasons, DCP disagrees with this recommendation, as it would require agencies to delay identifying and sharing information about proposed new facilities.

Recommendation 5: DCP should immediately and regularly update the beds-to-population ratio and publish the data on its website so that it is readily available to agencies and to all stakeholders, including members of the public.

Response: DCP agrees that the beds-to-population ratio should be regularly updated and made publicly available, and has already committed to updating the ratio based on the recently released Census Bureau decennial population data.

Thank you for the opportunity to respond to your draft Fair Share Audit Report.

Sincerely yours,



Daniel R. Garodnick





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