

DOING OUR FAIR SHARE, GETTING OUR FAIR SHARE

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

EXECUTIVE SUMMARY

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

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

Recognizing this pattern of unfairness, the 1989 Charter Revision Commission added a procedure colloquially known as “Fair Share” to the City Charter to govern how the City sites facilities that it operates, either directly or through contracts with third-party service providers. Fair Share was established to require the City to plan its facility sitings in a thoughtful, deliberative manner

that takes community input seriously and aims – at least in principle – to avoid the uneven distribution of these essential City facilities and services.

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

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

Key Issues:

- Fair Share Statements – which exist to explain how a siting is fair or to justify why an unfair siting is either appropriate or unavoidable – are generally inaccessible to the public.
- The City does not disclose enough data about the current distribution of facilities and comparisons between communities for the public debate to be well-informed.

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

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

Recommendations:

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

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

