

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

SUBCOMMITTEE ON LANDMARKS, PUBLIC SITING AND MARITIME  
USES

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April 12, 2011  
Start: 1:28 pm  
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HELD AT: Council Chambers  
City Hall

B E F O R E:  
  
BRAD S. LANDER  
Chairperson

COUNCIL MEMBERS:  
Council Member Maria del Carmen  
Arroyo  
Council Member Sara M. Gonzalez  
Council Member Daniel J. Halloran  
III  
Council Member Stephen T. Levin  
Council Member Rosie Mendez  
Council Member Annabel Palma  
Council Member Diana Reyna  
Council Member James Sanders Jr.  
Council Member Jumaane D. Williams  
Council Member Ruben Wills

## A P P E A R A N C E S (CONTINUED)

Brad S. Lander  
Opening Statement  
Chairperson  
Subcommittee on Landmarks, Public Siting and Maritime  
Uses

Christian Hilton  
Committee Counsel  
Subcommittee on Landmarks, Public Siting and Maritime  
Uses

Alonzo Carr  
Staff member  
Subcommittee on Landmarks, Public Siting and Maritime  
Uses

Gail Benjamin  
Staff Director  
Subcommittee on Landmarks, Public Siting and Maritime  
Uses

Michael Freedman Schnapp  
Policy Director  
Council Member Lander's Staff

Traci Sanders  
Council Member Lander's Staff

Fritz Schwartz  
Chairperson  
1989 Charter Revision Commission

Nick Economou  
Sergeant at Arms  
Subcommittee on Landmarks, Public Siting and Maritime  
Uses

Craig R. Hammerman  
District Manager  
Brooklyn Committee Board 6

## A P P E A R A N C E S (CONTINUED)

Eddie Bautista  
Executive Director  
New York City Environmental Justice Alliance

Kelli Terry Sepulveda  
Executive Director  
Point Community Development Corporation

Albert K. Butzel, Esq.  
Representing  
Great Jamaica Development Corporation

Justin K. Rodgers  
Director of Economic Development  
Greater Jamaica Development Corporation

Eric Goldstein  
New York City Environment Director  
Natural Resources Defense Council

Genevieve Gazon  
Community Organizer  
Environmental Justice Program  
New York Lawyers for the Public Interest

Murad Awawdeh  
Environmental Justice Organizer  
United Puerto Rican Organization of Sunset Park

Martha Laureano  
Director  
Community Health and Environment  
El Puente

Elena Conte  
Organizer for Public Policy Campaigns  
Pratt Center for Community Development

Kimberly Ong  
Ralph C. Menapace Jr. Fellow in Urban Land Use Law  
Municipal Art Society of New York

## A P P E A R A N C E S (CONTINUED)

Betamia Coronel  
Organizer for Outreach  
Organizations United for Trash Reduction and Garbage  
Equity  
Reading testimony of Ray Kairys  
Chairperson  
Organizations United for Trash Reduction and Garbage  
Equity

Sarah Martin  
Co-Chair  
Morningside Heights/West Harlem Sanitation Coalition

Jillian Sesenton  
The Point Community Development Corporation

Carole Shine  
Committee Counsel  
Subcommittee on Landmarks, Public Siting and Maritime  
Uses

2 CHAIRPERSON LANDER: Super.

3 [Gavel banging]

4 CHAIRPERSON LANDER: Good

5 afternoon. Thanks very much to everyone for being  
6 here. I'm City Council Member Brad Lander, the  
7 Chair of the Council's Land Use Subcommittee on  
8 Landmarks, Public Siting and Maritime Uses. And  
9 it's my pleasure to welcome everyone to this  
10 oversight hearing on the City's Fair Share Rules  
11 for Siting Public Facilities, the first one we've  
12 had, I think, in the 20 years of the Fair Share  
13 Rules.

14 Let me welcome and introduce my  
15 colleagues. First my colleagues who are on the  
16 Subcommittee, Council Member Jumaane Williams from  
17 Brooklyn, Council Member Annabel Palma from the  
18 Bronx, Council Member Maria del Carmen Arroyo from  
19 the Bronx, and James Sanders from Queens. In  
20 addition, for this oversight hearing, we are  
21 joined by several other Council Members who aren't  
22 members of the Subcommittee but I'm delighted to  
23 welcome them today, Council Member Ruben Wills  
24 from Queens, Council Member Sara Gonzalez from  
25 Brooklyn and Council Member Diana Reyna from

2 Brooklyn and Queens. Excuse me, all right.

3 Just over 20 years ago the City of  
4 New York embarked on a bold new direction in  
5 seeking to address the complex challenge of siting  
6 municipal facilities that can present a challenge  
7 for communities. A great city like New York  
8 requires infrastructure and services. We need  
9 sewage treatment plants or our homes and  
10 communities would be most unpleasant. We need  
11 waste transfer facilities or the garbage would  
12 stack higher than our homes. We need power  
13 transmission stations to light our homes and our  
14 streets. Salt piles to melt the snow and the list  
15 goes on and on. And we also require services,  
16 homeless shelters, adult homes, drug treatment  
17 facilities to meet our obligations as a  
18 compassionate and smart and thoughtful City.

19 In most cases people are glad that  
20 we have essential services and infrastructure in  
21 the City. But also in most cases they would  
22 prefer not to have them right on their block since  
23 they can be unpleasant, a drag on neighborhood  
24 quality of life or economics, harmful to health,  
25 causes of asthma and in some cases downright toxic

1  
2 for the people who live there. And so we are  
3 presented with a challenge in how to site them.

4 Too often these facilities have  
5 been concentrated in low income communities, in  
6 communities of color, in some cases waterfront  
7 communities while other communities have not had  
8 to bear their fair share of the burden. And  
9 historically there had been little agreement on  
10 where to locate those facilities and whether and  
11 how to mitigate the negative affects that such  
12 facilities have on their host communities.

13 The Charter Revision Commission of  
14 1989 heard many variations of these complaints  
15 from communities across the City and placed before  
16 voters a proposal to make the distribution of City  
17 facilities more equitable. It was their vision  
18 that fair share criteria would make decision-  
19 making processes used by City agencies in  
20 selecting sites more transparent, provide a more  
21 open forum for involvement in the land use  
22 process, and achieve more distributional equity in  
23 our City. And that proposal was adopted by the  
24 voters as part of the Charter revision in 1989.

25 In 1990 the City Planning

1  
2 Commission then promulgated rules pursuant to the  
3 Charter amendment, stating in those administrative  
4 rules that the purpose was to foster neighborhood  
5 stability and revitalization by furthering the  
6 fair distribution amongst communities of City  
7 facilities. Site selection criteria were  
8 promulgated and a set of formal processes were put  
9 in place, many of which we'll talk about in more  
10 detail today. For Council Members, there's a 2 or  
11 3-page document that details what some of the  
12 responsibilities of the City are pursuant to those  
13 rules.

14                   Unfortunately it's not clear that  
15 those rules achieved the vision that was put  
16 forward in the '89 Charter revision. And there is  
17 a general perception that we continue to  
18 concentrate facilities in low income communities,  
19 in communities of color. That in some cases the  
20 Fair Share Rules are simply, to be kind, window-  
21 dressing. And in order cases that there are ways  
22 that siting rules are evade or eluded in the  
23 process.

24                   What we wanted, therefore, to do  
25 today, as I said for the first time in the 20-year



2 history of the Fair Share Rules, was to ask a  
3 series of questions about those. Are the Fair  
4 Share Rules working? Do the rules as they were  
5 adopted by the City Planning Commission achieve  
6 the goals that were envisioned by the Charter  
7 Revision Commission? Are there new things that  
8 have happened in those 20 years that change how we  
9 are doing this or how we could be doing it? So  
10 what we wanted to provide was an opportunity for  
11 members of the public, for members of Community  
12 Boards, for environmental justice advocates, for  
13 City planners, for citizens, to come and raise  
14 some of those questions and try to get some  
15 answers.

16 Now unfortunately we hoped to begin  
17 this hearing by hearing from the Bloomberg  
18 Administration from not just the City Planning  
19 Commission who have a formal responsibility for  
20 the Fair Share Rules, but also from infrastructure  
21 agencies who have both the responsibility and the  
22 challenge of citing them. I think everyone that  
23 I've spoken to understands the challenges that  
24 administrative agencies face in seeking to cite  
25 those facilities that no one wants.

1  
2                   And we had promised and hoped for a  
3 partnership, a real balanced hearing in which we  
4 would listen to the Administration. This  
5 Administration in some cases has sought, as we'll  
6 talk about in just a minute, to do some things  
7 that would achieve Fair Share. And we were  
8 hopeful to have an open dialog with them about the  
9 process.

10                   Unfortunately the Bloomberg  
11 Administration has refused to send even a single  
12 representative to testify at this hearing. As I  
13 say, the only oversight hearing on this Charter  
14 mandated topic in at least a decade. And their  
15 refusal comes at a time when the Administration is  
16 already, unfortunately, reneging on their  
17 commitment to fairer siting. While the Bloomberg  
18 Administration achieved a historic agreement in  
19 2006, a Fair Share Plan for the City's management  
20 of solid waste which for the first time would have  
21 asked Manhattan to step up and shoulder some of  
22 the burden, we learned in the Preliminary Budget  
23 that the Administration had pushed the funding out  
24 for the necessary facilities for those marine  
25 transfer stations in Manhattan so far out in the

1  
2 future that I'm not sure we have those pages in  
3 the Capital Plan. And essentially therefore risks  
4 entirely denying the communities that have born  
5 the burden on the solid waste for too long that  
6 they will continue to do so out into the future.

7 This is at the same time, in  
8 addition, when the Administration claims that  
9 they're about to move forward citing a substantial  
10 number of new homeless facilities as a result of  
11 cuts in the State budget, an area, where we  
12 learned at a General Welfare hearing last year  
13 there are many problems with their compliance with  
14 the Fair Share process. Where month to month  
15 contracts are used to essentially evade the City's  
16 contracting process and never bring those  
17 facilities before the Fair Share siting process.  
18 And where facilities are dramatically over-  
19 concentrated in the Bronx, in southeast Queens and  
20 in some other places with no apparent criteria for  
21 the fair sharing of those facilities.

22 So as I said while we hoped the  
23 Administration would join the Council in a real  
24 partnership to review and strengthen our City's  
25 commitment to a Fair Share approach, we recognize

2 there are tough issues, we unfortunately are left  
3 to question what the Administration's commitment  
4 really is to Fair Share both in the specifics of  
5 the Solid Waste Management Plan and some other  
6 things we'll hear today, but also more generally  
7 in grappling with these issues in an open,  
8 transparent and honest way, as we are mandated by  
9 the Charter.

10 Nonetheless in the absence of the  
11 Administration's participation we have assembled a  
12 great hearing. We're going to hear first from  
13 Fritz Schwartz who chaired the 1989 Charter  
14 Revision Commission, and can speak to us about  
15 what the goals were for that process. After that  
16 we have at least one representative from a  
17 Community Board and then many representatives from  
18 community based groups, environmental justice  
19 advocates and planners who have been working on  
20 these issues on the ground for many years.

21 What we hope to do is raise our  
22 questions but also grapple with these tough  
23 issues. Our goal today is both to bring these  
24 issues to light but really this is the beginning  
25 of a process. There were some changes made that I

2 think we'll hear about to the Fair Share  
3 provisions of the Charter in the most recent  
4 Charter Revision Commission, the 2010 revision,  
5 but many, many more issues were raised there and  
6 many will be raised here that present us both the  
7 challenge of doing better on Fair Share Rules, of  
8 trying to restore and return to that vision in the  
9 '89 Charter and also opportunities, technology is  
10 different than it was 20 years ago and I believe  
11 there are opportunities to use new technology more  
12 thoughtfully to shine a light on this issue, to  
13 make it more possible for communities to  
14 understand their position, and to advocate, and  
15 more smartly, to reduce the burden as well that  
16 all communities face.

17 We've been joined--so I want to  
18 thank everyone for coming. We've been joined by  
19 Council Member Dan Halloran who is also a member  
20 of the Subcommittee. I want to say just a couple  
21 of thank-yous. I want to thank Christian Hilton,  
22 the Committee Counsel for his work on this and  
23 also Alonso Carr who's not here today but helped  
24 put this hearing together. Gail Benjamin who is  
25 the Staff Director of the Committee and also to a

2 couple of members of my staff, especially Michael  
3 Freedman Schnapp and Traci Sanders who've done  
4 much of the work in getting ready for the hearing.

5 So thanks very much to everyone.

6 With that I'd like to kick off the first panel and  
7 invite Fritz Schwartz to come up and testify.

8 [Witness getting settled]

9 CHAIRPERSON LANDER: So thank you.  
10 Just go ahead and push the button, it's on--off  
11 when it on and please begin by stating your name  
12 for the record and proceed.

13 MR. FRITZ SCHWARTZ: It's on now?  
14 Yeah. Thanks. I pushed the button, it went off  
15 so... So I'm Fritz Schwartz. I was the Chair of the  
16 1989 Charter Commission. And I've been asked to  
17 talk a little bit about why we wanted Fair Share  
18 provisions and what we sought to accomplish with  
19 them.

20 I'm going to talk about the formal,  
21 then the problem, and then the solution. From a  
22 formal point of view the Fair Share idea came out  
23 of the series of legislative hearings the 1989  
24 Charter Commission did before starting its work on  
25 amending the Charter. We had six extremely

2 extensive legislative hearings which explored a  
3 number of issues.

4 One hearing on March 2<sup>nd</sup>, 1989 was  
5 on land use. And we worked hard. I'm not saying  
6 later Charter Commissions didn't but we worked  
7 very hard. That hearing started at 10:00 in the  
8 morning and went to 7:50 in the evening. It had  
9 543 pages of transcript. It had 2 sub-hearings, 1  
10 of which was on the location of locally  
11 undesirable land uses. That covered about 280  
12 pages of testimony.

13 So the germ of the idea for Fair  
14 Share actually came into my mind and I was  
15 important later, I mean I was Chair but I was  
16 specifically important on this particular  
17 suggestion, came into my mind through those  
18 hearings. There was testimony from neighborhoods,  
19 from people in government and people outside of  
20 government about the unfairness and the  
21 frustration that was caused by a disproportionate  
22 location of undesirable facilities in poor  
23 communities, minority communities and non-  
24 Manhattan communities.

25 It was demonstrably unfair. We

2 were persuaded it was unfair. At the Commission  
3 hearing of June 15<sup>th</sup>, 1989 I came forward with a  
4 lot of proposal which were the proposals that  
5 resulted in the Commission's consensus. From that  
6 June 15<sup>th</sup> meeting, while we didn't have 100%, we  
7 knew--I knew we were going to get a result. And  
8 of course as you know or you may not know, the  
9 1989 Charter was not just a desire for a change in  
10 the City government, it was a Constitutional need  
11 for the change in the City government because the  
12 government had been held unconstitutional because  
13 the Board of Estimate violated one person, one  
14 vote. We had to change the government.

15                   Once we decided we had to change  
16 the government, we went far beyond just solving  
17 the problem of the Board of Estimate because just  
18 to illustrate it with a comment directed to the  
19 City Council, once one knew the Board of Estimate  
20 was going to disappear, one had to think hard  
21 about what the City Council was going to be like.  
22 What powers it would have? And secondly, how  
23 representative it would be?

24                   And we believed that the City had a  
25 serious problem in lack of representativeness so



2 that that's the reason why the City Council went  
3 from 35 members to 51 members. We did an analysis  
4 that said if it went from 35 to 51 you would find  
5 a far higher percentage of non-white members  
6 getting elected to the Council and we thought that  
7 was important and desirable.

8 So Fair Share and the citywide  
9 statement of needs which sort of needs to be--the  
10 two need to be looked at together, came out of  
11 those hearings, came out of other--those were the  
12 legislative hearings. When we had hearing all  
13 around the City, and again, I say we worked very  
14 hard. We probably had 30 hearings around the City  
15 in garnering testimony from the citizens of New  
16 York about what they saw, thought was necessary  
17 and then once we began coming forward with our  
18 proposals, whether our proposals were good, bad,  
19 or indifferent.

20 Now before I get to the problem of  
21 Fair Share, I wanted to discuss with you the three  
22 issues that as a Commission we thought were really  
23 important to solve for the City of New York. Of  
24 course we had to solve the one person, one vote  
25 problem. But what did we think about the City in

1  
2 1989? What did we think were the most important  
3 problems that were undermining the success of the  
4 City?

5           There were three. One was that the  
6 minority people in the City were not being treated  
7 well in any respect. That was problem number one.  
8 Problem number two was that there was a Manhattan-  
9 centric, I come from Manhattan, but there was a  
10 Manhattan-centric, I was born there too actually,  
11 not just from there, Manhattan-centric government  
12 both in reality and in perception. And we thought  
13 both the reality and the perception needed to be  
14 addressed.

15           The third one I think is not  
16 relevant to this hearing but I'll just tell it to  
17 you because it was the third thing we had. And  
18 I'd given them to you in the order of their  
19 important. First, race, second Manhattan-centric,  
20 the third one was felt that New York City was a  
21 one-party government and that there was inadequate  
22 representation from other parties than the single  
23 one that had domination in the City.

24           So could you do much about that?

25 No. But one of the subsidiary reasons, one of the

2 subsidiary reasons for enlarging the City Council  
3 from 35 to 51 was it might result in a few more  
4 people not from the Democratic Party getting  
5 elected. At that time, maybe one of the members  
6 is one of those people who benefits from that.

7 [Off mic agreement from several  
8 Council Members]

9 MR. SCHWARTZ: But at that time  
10 there was a Minority Leader in the City Council.  
11 She led only herself. She was the Minority Leader  
12 of the City Council.

13 So that was the broad context in  
14 which Fair Share fits and it fits quite well with  
15 objective number one and objective number two.  
16 Now the narrower context was that it was clear  
17 that poor districts were getting an undue share of  
18 undesirable uses and an inadequate share of  
19 desirable uses.

20 A little footnote on that: a way in  
21 which this subject can be thought about is to make  
22 more efforts to balance the undesirable with  
23 working harder to put the desirable into places.  
24 Look at parks for example. I mean the affluent  
25 neighborhoods get these incredibly wonderful

2 parks. Gems of New York City. Couldn't more be  
3 done for parks in the poorer neighborhoods that  
4 have always gotten more of the undesirable?

5 But mostly Fair Share was focusing  
6 on the undesirable more than the balance with the  
7 desirable. We thought that that imbalance was  
8 both harmful and unfair. Unfair for obvious  
9 reasons, it's not fair that a portion of the City  
10 is saddled with a disproportionate amount of the  
11 undesirable places. It's not fair.

12 But harmful also, and this was, I  
13 think, some of the best testimony that we got at  
14 that early hearing. We had people who were from  
15 communities, actually I think in Queens but I'm  
16 not absolutely sure about that, and they said how  
17 their community was struggling to get itself to be  
18 stronger, have--be less beset with problems. And  
19 they said well every time we kind of take a step  
20 forward we get knocked down again a little bit by  
21 having another undesirable facility placed in our  
22 community, so both harmful and obvious, both  
23 harmful and unfair.

24 This isn't an abstraction. It's  
25 very clear. It was very clear then. I assume

2 it's very clear now although I'm not an expert on  
3 how things have happened since then. But it was  
4 very clear from the record made before the  
5 Commission that there was an unfair,  
6 disproportionate siting of undesirable places in  
7 poor communities.

8 Now the government witnesses, you  
9 know, they sort of seemed to talk on both sides of  
10 the question. They would say, yes, we recognize  
11 the problem. But then they would say, yeah, but  
12 the land is much cheaper. The one thing they  
13 never did say even though I'm sure it was a factor  
14 and I assume it still is a factor is they less  
15 feared the backlash from voters in the communities  
16 that were being beset by the undesirable uses. I  
17 assume that's still true although I don't know.

18 So it was right to make the change  
19 and that the change was necessary. It was obvious  
20 to any New Yorkers who thought hard about the  
21 subject.

22 Now the solution, we did not have a  
23 rigid rule that said you may not put more than X  
24 percent or X dollars worth or X number of  
25 facilities in any community. And I suppose that

2 was because we thought of the Charter as more a,  
3 you know, a foundation. And this is an analogy  
4 that I think is important when you think about any  
5 constitution including the Constitution of the  
6 City of New York. It is a foundation. It's not  
7 the building. All you really should be doing in a  
8 Constitution is to create a foundation. And then  
9 it's up to the legislative and executive branches  
10 to build the building which hopefully is beautiful  
11 but may be inadequate but you do want to have a  
12 good foundation.

13 So we did not elect to have a more  
14 rigid system. That could be reviewed. And I  
15 don't know where I'd come out today but it could  
16 be reviewed. Then it'd have real complication if  
17 you did review it, what would the standards be,  
18 that would hardly be easy.

19 But we created a process that was  
20 designed to force government officials, whether  
21 politicians, mayors particularly, because mayors  
22 are much more involved in this than any other  
23 government officials, borough presidents have a  
24 role but the mayors and the council has a role,  
25 but the mayors are the most important, to force

2 government officials particularly mayors to pay  
3 attention to the subject and to give the public  
4 both the public at large and affected communities  
5 ammunition with which to make their case that  
6 putting such and such a place is unfair or you  
7 ought to mitigate it in some way.

8 By analogy and I see a great  
9 witness from NRDC is here, Goldstein,  
10 environmental group, it's the best analogy is to  
11 the environmental impact statements that are  
12 required before certain large government-supported  
13 projects take place or are allowed to take place  
14 where the sponsor has to lay out and has to lay  
15 out honestly a description of what the  
16 environmental impact will be. And the theory of  
17 that is if they're forced to do it, it gives the  
18 affected people, it gives communities a chance, a  
19 better chance, to think about it. And you should  
20 force the government to think about it.

21 Now I don't know and this is  
22 something I think an oversight hearing could  
23 usefully do, I don't know how adequate these  
24 statements of the Fair Share statements are  
25 because if they're not adequate that is definitely

2 something you could, after a good oversight  
3 hearing, come up with requirements to--it's  
4 easier, I think, for the Council to force stronger  
5 process performance than it is for you to lay down  
6 a X percent here and Y percent there and so forth.

7 But it seems to me if I were doing  
8 this hearing; I'd want to look very hard at how  
9 adequately the statements are prepared and what  
10 attention is paid to them. You know, you might  
11 want to know have you ever changed--changed  
12 something because you were told that it was  
13 unfairly burdening a community? Or have you ever  
14 said well, yeah, that community is getting a lot  
15 of bad stuff but gosh we could try harder to get  
16 something good there.

17 So my guess is you're going to be  
18 able to do more useful work by focusing on how  
19 well they've made the descriptions. Are they  
20 fair? Do they do them rigorously? Do they ever  
21 pay attention to them and change their mind?

22 So in conclusion I guess I'd say  
23 that I think this was a really important problem  
24 in 1989. I personally felt very proud of putting  
25 this in the Charter. Just a little political



2       aside, when we, you know, you have to campaign all  
3       over the City to win the vote on the Charter. And  
4       we got more votes or the same amount of votes on  
5       that Charter election as this, in '09, were votes  
6       in the mayoral campaign. So it was something  
7       people were very interested in.

8                       But I feel very proud of what we  
9       did. And I hope you can, having this first  
10      hearing ever or Brad, the Chairman said in ten  
11      years, and he also said ever, so I assume it's  
12      ever. So thank you.

13                      CHAIRPERSON LANDER: Thank you very  
14      much for much for being here and for providing us  
15      with some of the background on how we got here. I  
16      know a couple of my colleagues have questions. I  
17      guess one thing that has been raised to us as we  
18      prepared for the hearing and we do have a few of  
19      the statements of the, I can't say it's all that  
20      thorough of a Fair Share analyses, but we'll pass  
21      these around to members so they can take a look.  
22      But one thing that has been alleged is that while  
23      the Commission had a goal essentially, a process  
24      goal but nonetheless one with the goal of better  
25      distributional equity.

1  
2                   There wasn't a set of standards or  
3 a number but the goal wasn't only process  
4 transparency, the goal was process transparency in  
5 pursuit of better distributional equity. That the  
6 rules as they were adopted by the City Planning  
7 Commission a year later in 1990, tilted the  
8 balance on that or in some ways undid the balance  
9 and really set up a process, a set of hoops that  
10 could be sort of moved through and that if there  
11 was essentially kind of disclosure and a placement  
12 of things in a citywide statement of needs, less  
13 of a pull in the direction of broader  
14 distributional equity. And that's one of the  
15 things that we're going to try to test. But I  
16 wonder if you remember at the time--

17                   MR. SCHWARTZ: [Interposing] Oh,  
18 yeah, there's no question. We chose a process  
19 remedy but our goal was a better distributional  
20 equity. We felt it was unfair. We felt it was  
21 harmful to the City. And so it should not just go  
22 along business as usual. We absolutely had that  
23 goal.

24                   CHAIRPERSON LANDER: Thank you.  
25 All right. I have a couple more questions but let

2 me, we have a few colleagues who have signed up so  
3 let me call on them. [Off mic] I did. All right.  
4 So let's start with Council Member Wills.

5 COUNCIL MEMBER WILLS: I want to  
6 really thank you for being here today. I also  
7 wanted to speak to you about some of the--well the  
8 three priorities that you said were supposed to be  
9 approached: Minorities, number one, not being  
10 treated well; Manhattan-centric government both in  
11 reality and perception; and well the third one is  
12 the one party but that's not too much of an issue.

13 COUNCIL MEMBER HALLORAN: Right.

14 COUNCIL MEMBER WILLS: [Laughing].  
15 That's going to be an issue when he speaks. 22  
16 years later, from your experience and from the  
17 years that have passed, seeing how the government  
18 has basically not taken into account the things  
19 that the Charter Revision actually was supposed to  
20 put there to change, how does that make you feel  
21 with all of the work and the compassion that you  
22 put into your work, 22 years later? How does that  
23 make you feel now?

24 MR. SCHWARTZ: Well, you know, in a  
25 way I am confident we built a good foundation.

2 So--

3 COUNCIL MEMBER WILLS:

4 [Interposing] Mm-hmm.

5 MR. SCHWARTZ: --so maybe that's  
6 just covering myself. But it is--I do feel we  
7 built a good foundation.

8 COUNCIL MEMBER WILLS: Mm-hmm.

9 MR. SCHWARTZ: But I think on this  
10 issue it has not had the progress we'd assumed.

11 COUNCIL MEMBER WILLS: Mm-hmm.

12 MR. SCHWARTZ: I think on generally  
13 the issue of race in the City, while still a  
14 problem, is much, much better than it was in 1989.  
15 You're' too young to remember that. Some of your  
16 colleagues may.

17 COUNCIL MEMBER WILLS: Mm-hmm.

18 Huh.

19 MR. SCHWARTZ: I'm not gesturing at  
20 any particular person, you understand--

21 [Crosstalk, laughter]

22 COUNCIL MEMBER SANDERS: Take it  
23 with the wisdom.

24 MR. SCHWARTZ: But I think it's  
25 much better. I think the fact the City Council

2 has such a large, high percentage of diverse body  
3 is a great success. On the Manhattan-centric, you  
4 know, I've gone to doing other things. I haven't-  
5 -but I think it's a little better. We did some  
6 things requiring, I know, we made a last-minute, I  
7 can now put it this way, deal with the Borough  
8 President of Queens that made it more important  
9 for City agencies to put some of their offices in  
10 non-Manhattan Boroughs. But you still are  
11 getting, you know, the mayors, have they all come  
12 from Manhattan? I mean they probably have. And  
13 Manhattan is still very important. I think some  
14 people outside of Manhattan refer to going to The  
15 City--

16 COUNCIL MEMBER WILLS:

17 [Interposing] Mm-hmm.

18 MR. SCHWARTZ: --and some people in  
19 Manhattan still refer to as the outer boroughs.

20 COUNCIL MEMBER WILLS: Mm-hmm.

21 MR. SCHWARTZ: So there's been some  
22 progress. The City is always a work in progress.

23 COUNCIL MEMBER WILLS: Okay. I  
24 have two more questions Mr. Chair. The locally  
25 undesirable land uses, could you give me a list of

2 a few of those, maybe two or three of those that  
3 you would classify?

4 MR. SCHWARTZ: Prisons, homeless  
5 shelters, the Chairman gave some, I would add  
6 garages where buses are, you know, spewing out  
7 poison. And my wife who does work on the enormous  
8 harm that's done to infants--

9 COUNCIL MEMBER WILLS:

10 [Interposing] Mm-hmm.

11 MR. SCHWARTZ: --even in the fetus  
12 from breathing bad air. There's much more bad air  
13 in a lot of the communities that get these  
14 facilities. The issue of how the garbage is  
15 handled, you know, those are some examples.

16 COUNCIL MEMBER WILLS: Was there a  
17 reason why you did not put a formula in for the  
18 land usage, undesirable land usage--?

19 MR. SCHWARTZ: [Interposing] Yeah,  
20 I think it would have been hard to do it and not  
21 be arbitrary.

22 COUNCIL MEMBER WILLS: Mm-hmm.

23 MR. SCHWARTZ: And I don't know how  
24 we would have devised one. And also there are--  
25 what one of the dilemmas is land is cheaper in the

2 poor communities.

3 COUNCIL MEMBER WILLS: Minority  
4 communities.

5 MR. SCHWARTZ: In minority  
6 communities--

7 COUNCIL MEMBER WILLS:  
8 [Interposing] Mm-hmm.

9 MR. SCHWARTZ: --yeah, land is  
10 cheaper. And that can't be enough to--isn't  
11 enough to justify the disproportionate siting in  
12 those communities but the City, you know, they--I  
13 think that's the--what drives the City in--that  
14 and I think you, one of you, recognized my point  
15 about the political opposition.

16 COUNCIL MEMBER WILLS: Right.

17 MR. SCHWARTZ: Is less in the  
18 poorer communities that it would be--I remember an  
19 exchange that I had with Ed Koch when I was  
20 Corporation Counsel before I was doing the  
21 Charter. And he was talking about the homeless.  
22 And he said does any--and we had a group of seven  
23 or eight close advisors, and he said does anybody  
24 think we should put homeless in the 7<sup>th</sup> Regiment  
25 Building on Park Avenue. You know, there were

1  
2 being put in similar buildings in the Bronx--

3 COUNCIL MEMBER WILLS:

4 [Interposing] Mm-hmm.

5 MR. SCHWARTZ: --and I said, yes.

6 I think that would be quite fair. And it would do  
7 good. It would make the whole City worry more  
8 about solving the problem of homelessness.

9 COUNCIL MEMBER WILLS: Mm-hmm.

10 MR. SCHWARTZ: That, by the way,

11 is--

12 COUNCIL MEMBER WILLS:

13 [Interposing] Right.

14 MR. SCHWARTZ: --another factor.

15 COUNCIL MEMBER WILLS: Mm-hmm. The  
16 fact that land would be cheaper in lower income or  
17 minority communities, shouldn't that go the same  
18 way when you're talking about putting maybe youth  
19 centers or community centers or something that  
20 would benefit the community? You know, it would  
21 probably be cheaper--

22 MR. SCHWARTZ: [Interposing] Well I  
23 think it does--I think it does. And I think that  
24 is an area where you might be able to have a  
25 substantive rule instead of only the procedural



1  
2 rules. I mean you could say when the saturation  
3 in a given community becomes over something or  
4 other--

5 COUNCIL MEMBER WILLS:

6 [Interposing] Right.

7 MR. SCHWARTZ: That would take some  
8 difficulty to find but you probably could define  
9 it. Then the City has to demonstrate that it is  
10 trying harder to put beneficial places in that  
11 community. Now that I think would be a fruitful  
12 area for your Committee or the Council to look at.

13 COUNCIL MEMBER WILLS: Well I'm  
14 drafting legislation now with the help of Greater  
15 Jamaica Development and other advocacy groups  
16 that's going to more of a formula of Community  
17 Boards where one Board should not over maybe 20%  
18 of something like that of anything that would be  
19 undesirable land use or homeless shelters or  
20 anything else.

21 Currently Community Board 12, 10  
22 and 9, but 12, the majority of this, has 14 of the  
23 18 of the entire Queens Borough's homeless  
24 shelters. We're in a fight right now because DHS  
25 has changed the usage from a family shelter where

2 we had things in place to accommodate that to a  
3 single men's shelter with no adequate notification  
4 to the community at all.

5           These are the types of things that  
6 we want to do away with. We don't want DHS--and  
7 by the way, we were supposed to have a hearing or  
8 a joint meeting with DHS tonight and they pulled  
9 out of that also, Mr. Chairman. I just wanted to  
10 let you know that. So these are some of the  
11 things that we are faced with every single day on  
12 a daily basis.

13           MR. SCHWARTZ: Mm-hmm.

14           COUNCIL MEMBER WILLS: And the  
15 residual implications of some of the things that  
16 come out of a single male shelter are things that  
17 are not even being addressed. Just safety  
18 concerns. There's been a spike in break-ins.  
19 There's been a spike in certain things. And  
20 Queens as a whole and southeast Queens has--we  
21 understand what it is to help somebody when  
22 they're down. But we're saying that we should not  
23 have the unfair burden or 70% or 68% of the entire  
24 Borough's shelters. So could you--

25           MR. SCHWARTZ: Well, you know, that

1

2 would be--if you guys could figure limited ways to  
3 add substantive rules to the process requirements--  
4 -

5 COUNCIL MEMBER WILLS:

6 [Interposing]

7

8 MR. SCHWARTZ: --after, you know,  
9 full hearings that really get the facts on the  
10 table. I think that probably in light of the fact  
11 that the problem has not significantly improved if  
12 it's improved at all since 1989.

13 COUNCIL MEMBER WILLS: Mm-hmm.

14 MR. SCHWARTZ: I think your record  
15 would justify that. So I mean I'd just say when  
16 you do it, you've got to have a really good  
17 record. And I would hope that newspaper articles  
18 can be, you know, come as a consequence of the  
19 sort of attention you guys are giving to this  
20 because--

21 COUNCIL MEMBER WILLS:

22 [Interposing] Mm-hmm.

23 MR. SCHWARTZ: --because that is a  
24 way of supplementing the legislative record. If  
25 there's a good investigative reporter who goes

1

2 out.

3 COUNCIL MEMBER WILLS: Mm-hmm.

4 MR. SCHWARTZ: And really makes the  
5 story.

6 COUNCIL MEMBER WILLS: We've  
7 actually had that. I appreciate that but we just  
8 had that with the Daily News--

9 MR. SCHWARTZ: [Interposing] Mm-  
10 hmm.

11 COUNCIL MEMBER WILLS: --and DHS  
12 and the Commissioner's comment was we have a moral  
13 responsibility to house and provide shelter so we  
14 have to stick it there. You know--

15 MR. SCHWARTZ: [Interposing] Well  
16 that--the first half of that sentence is correct--

17 COUNCIL MEMBER WILLS:  
18 [Interposing] Mm-hmm. Right.

19 MR. SCHWARTZ: --the second half  
20 does not follow from the first half.

21 COUNCIL MEMBER WILLS: Thank you  
22 very much Mr. Chair.

23 CHAIRPERSON LANDER: Thank you.  
24 Yeah, we have--so let me--there, it's on, right?  
25 That's okay. We have quite a few Council Members

2 signed up to ask questions and then we have a  
3 great list of folks signed up to testify. So let  
4 me just encourage us to get to as many of them as  
5 we can 'cause I think we'll start building the  
6 record today. Although as I said this really is  
7 the beginning of a process for the Council.  
8 Council Member Sanders.

9 COUNCIL MEMBER SANDERS: Thank you  
10 Mr. Chair. Since time is not my friend I won't  
11 bring attention to our witness' storied history.  
12 I just want you to put out the book. I'm very  
13 eager to see the book.

14 Usually we're sitting at the other  
15 side of the table when I have the pleasure of  
16 seeing you. Because I may sit there again, I'll  
17 be kind to you--

18 MR. SCHWARTZ: [Interposing] But  
19 I'm no longer the Chair of that Committee so--

20 COUNCIL MEMBER SANDERS:  
21 [Interposing] Well if that's the case, there's no  
22 mercy then.

23 MR. SCHWARTZ: Right.

24 [Laughter]

25 COUNCIL MEMBER SANDERS: None at

2 all. Let me note that it is very sad that the  
3 Administration is not here today. How can one do  
4 a responsible hearing without the other party in  
5 the room? It's exceptionally sad and the Mayor,  
6 you've got to get off that losing streak.

7 Sir, I'm very concerned about  
8 several different things. And first let me point  
9 out it could be also said that land is cheaper in  
10 those communities because you're putting such  
11 negative placements there--

12 MR. SCHWARTZ: [Interposing] Sure.  
13 Sure that's true.

14 COUNCIL MEMBER SANDERS: --and the  
15 chicken and the egg, it never--you can't develop  
16 or build your land value because you're always  
17 getting a sewage treatment or some other great  
18 usage there, without, as you pointed out so well,  
19 the positive placements, something to help balance  
20 it.

21 My colleague, of course, has spoken  
22 about the situation of southeast Queens which I  
23 was also going to speak of. I also am very aware  
24 of the SWMP or the sanitation element here and how  
25 environmental justice is becoming a concern. When

2 we push off the siting, the paying of these  
3 things, what we are saying then is that it will  
4 stay in those communities where it is until the  
5 day comes when we see fit to fund it. The  
6 negative implication is that those, the asthma  
7 rate, the other rates that are horrifying in those  
8 communities continue to worsen.

9 But since my colleague spoke so  
10 well of the situation of southeast Queens and I am  
11 going to respect my Chair because on another day  
12 he will call me first, one day, I am going to  
13 yield. Thank you Sir.

14 CHAIRPERSON LANDER: Thank you  
15 Council Member Sanders. In the name of Borough  
16 equity, we'll head up to the Bronx. Council  
17 Member Arroyo.

18 COUNCIL MEMBER ARROYO: We were  
19 told by our Sergeant that all the chit-chat that  
20 was going on was picked up on the tape. So. We  
21 apologize. [laughing]. I want to thank you Mr.  
22 Schwartz for being here, our Chairman for calling  
23 this hearing and engaging this process. I think  
24 it's very important.

25 One of the troubling things that I

2 find is that this language and Charter stuff speak  
3 to City facilities. And when you represent a  
4 district like I do and like Council Member Reyna  
5 does where we have massive land that is  
6 manufacturing zoned, that makes these kinds of  
7 facilities as of right by private developers.

8 I am not overwhelmed by the City  
9 facilities. I am overwhelmed; my community is  
10 overwhelmed by the number of facilities that are  
11 private transfer stations owned by private  
12 entities. A landlord who, what's the word I'm  
13 looking for? Hoards the units of housing  
14 available and then turns it over to a nonprofit to  
15 run the shelter. That's not a City facility  
16 technically. It is a service provider, providing  
17 services in the community. They are not required  
18 to come to us for a siting application. The ULURP  
19 process is never engaged.

20 How do we address that part of the  
21 reality that communities like Council Member  
22 Reyna's and mine have to deal with every single  
23 day? And some of the folks in the audience here  
24 have been engaged in conversations around the over  
25 saturation. I have in Community Board 1 alone, 16



2 permitted waste transfer stations. Different  
3 capacities but fairly large, most of them.

4 How do we change conversation to  
5 ensure that even in as of right locations that  
6 there's a process--

7 MR. SCHWARTZ: [Interposing] Well  
8 we--

9 COUNCIL MEMBER ARROYO: --that Fair  
10 Share becomes part of the conversation because in  
11 that reality it does not factor in.

12 MR. SCHWARTZ: I think you could,  
13 with legislation, direct that--solve that problem,  
14 address that problem anyway. I mean I think the  
15 City Charter Commission that finished in '09, was  
16 it in '09 or '10? Anyway.

17 CHAIRPERSON LANDER: '10.

18 MR. SCHWARTZ: '10. They put in  
19 something that said State and Federal, I believe,  
20 facilities had to be included in the Fair Share  
21 analysis. But you could easily say and private  
22 facilities, you would have to define them; it  
23 wouldn't be, you know, every grocery store, but  
24 the private facilities that have adverse impacts  
25 have to be measured and included in the Fair Share

1

2 statement. You certainly could do that. And you  
3 could do that by legislation. You don't have to  
4 wait for a Commission--

5 COUNCIL MEMBER ARROYO:

6 [Interposing] And we today do not have that  
7 language so--

8 MR. SCHWARTZ: [Interposing] No,  
9 no, I say you could change the law--

10 COUNCIL MEMBER ARROYO:

11 [Interposing] Okay.

12 MR. SCHWARTZ: --I think.

13 CHAIRPERSON LANDER: So the 2010  
14 Charter Revision Commission--so I think there's a  
15 couple of issues here.

16 COUNCIL MEMBER ARROYO: Okay.

17 CHAIRPERSON LANDER: One is the  
18 2010 Charter Revision Commission did require the  
19 placement of--on the map that the City keeps for  
20 the purposes of essentially disclosure and looking  
21 at what the burdens are State, Federal and private  
22 transportation and waste management facilities.  
23 Now, for example, they left power plants off the  
24 map, those are not required to be--

25 COUNCIL MEMBER ARROYO:

1

2 [Interposing] And I'm sure homeless shelters were  
3 left--

4 CHAIRPERSON LANDER: --include at  
5 all.

6 COUNCIL MEMBER ARROYO: --off the  
7 map as well.

8 CHAIRPERSON LANDER: Actually I  
9 think health and social service facilities  
10 operated on behalf of the City, State or Federal  
11 government have to be placed on the map. That's a  
12 separate issue from whether when they're sited the  
13 existence of the map is at all meaningful.

14 COUNCIL MEMBER ARROYO: Mm-hmm.

15 CHAIRPERSON LANDER: It's still  
16 only City facilities which come before us for  
17 review so there's a separate set of questions I  
18 think it will be good to look at about the  
19 visibility of the map. 20 years ago that mapping  
20 technology was pretty difficult to see. And so I  
21 was looking in this hearing, San Francisco  
22 actually has a quite good website where these  
23 things are made visible whereas we have something  
24 that perhaps you can get at the Department of City  
25 Planning if you pay and go and file for it but

1

2 which is not visible. But there's also a question  
3 of could--to what extent permitted, City permitted  
4 facilities come through this process.

5 MR. SCHWARZ: Well you could easily  
6 change--

7 COUNCIL MEMBER ARROYO:  
8 [Interposing] Or State permitted because they may  
9 not necessarily--NYOFCO for example is a State  
10 permitted facility that was functioned--thank God,  
11 was, right, the operative word. Because the State  
12 permitted the only business it had was the City  
13 sludge that it was processing.

14 CHAIRPERSON LANDER: Right.

15 COUNCIL MEMBER ARROYO: And, you  
16 know--

17 CHAIRPERSON LANDER: [Interposing]  
18 So there probably is a way to get wider reach--

19 MR. SCHWARTZ: [Interposing] You  
20 could do--

21 COUNCIL MEMBER ARROYO:  
22 [Interposing] So that--

23 MR. SCHWARTZ: --by legislation.

24 CHAIRPERSON LANDER: [Interposing]  
25 Right by legislation.

2 COUNCIL MEMBER ARROYO: --my point-  
3 -the question and I guess, you know, is for  
4 further discussion Mr. Chair as we move along in  
5 this process is that we cannot look at this only  
6 from the City facility perspective in that there  
7 are communities that by virtue of the zoning  
8 that's included, become the target because it's  
9 the easy way to get it done, as of right. And  
10 that left out of the conversation will continue  
11 because I don't know if you noticed that most of  
12 the communities that have the larger amount of M-  
13 zoned districts are some of the poorer communities  
14 in the City. So it has to be in tandem. It  
15 cannot leave out that other component in the  
16 process. Thank you Mr. Chair.

17 CHAIRPERSON LANDER: Thank you.  
18 Having modestly addressed Borough equity in the  
19 question list, we'll now go to your third Charter  
20 goal of party equity and we'll call on Council  
21 Member Halloran to ask the next questions.

22 COUNCIL MEMBER HALLORAN: Forgive  
23 me if I don't believe you succeeded very well.

24 MR. SCHWARTZ: [Chuckling] How  
25 many?

1

2 COUNCIL MEMBER HALLORAN:

2

3 [Interposing] There are five of us which--

3

4 [Crosstalk, laughter]

4

5 COUNCIL MEMBER HALLORAN: --is huge

5

6 in 51, right, exactly. Well if we do the numbers

6

7 we're 20% of the voting electorate and we

7

8 represent 10% so I guess you're halfway there at

8

9 least based on the 4 million voters of the City of

9

10 New York and the demographics I just looked up.

10

11 Although the Independence Party and blank should

11

12 also have significant representation and I haven't

12

13 seen any blanks on the City Council except perhaps

13

14 in different ways that are not related to party

14

15 registration. I'm kidding my colleagues--

15

16 [Crosstalk, laughter]

16

17 COUNCIL MEMBER HALLORAN: I'm

17

18 kidding. I'm kidding. The three issues that you

18

19 came to the table with appear to have in some ways

19

20 shaped the debate that the Chair has discussed.

20

21 And I agree with him wholeheartedly and probably

21

22 with my colleagues in a large respect that the

22

23 mayoral powers of which you were so cautious of,

23

24 seemed to have taken on a life of their own and

24

25 that the Charter regrettably did not adequately

25

1  
2 address or consider some of those issues.

3           While I certainly understand that  
4 it is a strong mayoralty that the City has always  
5 had, the declaration by the Supreme Court that the  
6 Board of Estimate was unconstitutional left us in  
7 a lurch. I'll point out one issue. For example,  
8 the BSA, the Board of Standards and Appeals, once  
9 had to have as its check to power, the Board of  
10 Estimate. As we sit here today, much of our land  
11 use powers are gobbled up by the BSA without  
12 recourse to us. Normally land use is a  
13 prerogative of the City Council. It is something  
14 that we are able to exercise our authority on.

15           However we can't do it with regards  
16 to things as simple as variances because the Mayor  
17 appoints the BSA and the BSA answers to no one.  
18 Now clearly that's because when the Board of  
19 Estimate was there to declare it unconstitutional,  
20 that component was never addressed. What is the  
21 appellate level besides an Article 78 proceeding  
22 to remedy there? Now I've introduced legislation  
23 and I would encourage my colleagues to sign onto  
24 it with regards to that, but that's an example of  
25 what the problem was is looking at something as

2 large in scope as the Charter.

3                   Could you explain to us how you  
4 came to what the foundational notions were to  
5 creating this revised Charter? Because you  
6 basically started from scratch in many respects  
7 and Fair Share became a sort of component of that.  
8 How did you come to what you believed was  
9 foundational? And are there reasons you missed  
10 things as glaring as land use power and the BSA  
11 not being synchronized when you did it?

12                   CHAIRPERSON LANDER: I'm going to  
13 ask that we try to focus on Fair Share, the  
14 temptation to, you know, to revisit the whole  
15 Charter will get the badder of us so let's--

16                   COUNCIL MEMBER HALLORAN:  
17 [Interposing] Of course.

18                   CHAIRPERSON LANDER: --we'll do  
19 this question and then let's really return to the  
20 focus to Fair Share--

21                   MR. SCHWARTZ: [Interposing] Well we  
22 worked very hard. And that's the key to coming up  
23 with an analysis of the City. We listened much,  
24 much more than, I don't want to say anything  
25 critical of later Charter Commissions, but nobody



2 listened like we did. I was accused of listening  
3 people to death. And my colleagues, our hearings  
4 in the Boroughs usually went on to 2:00 or 3:00 in  
5 the morning. And my colleagues got a little  
6 annoyed at me.

7 But it was because we wanted to  
8 listen and we wanted to react. We were  
9 independent from the Mayor. One of my very first  
10 decisions was to decline Ed Koch's request that we  
11 not finish in 1989. No other Charter Commission  
12 or next to no one since then has been independent  
13 of the Mayor. And if you're not independent of  
14 the Mayor who makes the appointments, you're not  
15 going to be trusted by the people and you're not  
16 going to do the kind of job you should do. So  
17 those would be some ideas about the Charter.

18 COUNCIL MEMBER HALLORAN: I  
19 appreciate that very much.

20 MR. SCHWARTZ: Sure.

21 COUNCIL MEMBER HALLORAN: Now as  
22 you were formulating Fair Share and while I know  
23 that it has definitely impacted some of our  
24 minority communities more, I would say that it has  
25 impacted all of the "outer boroughs" in a

2 completely disproportionate sense--

3 MR. SCHWARTZ: [Interposing] I  
4 agree with you on that and it was interesting.  
5 Now I'm talking politics to people who were  
6 politicians and I'm not one but it helped us win.  
7 It helped us get more votes that all of the  
8 communities in the City liked Fair Share. Staten  
9 Island for example--

10 COUNCIL MEMBER HALLORAN:

11 [Interposing] Sure.

12 MR. SCHWARTZ: Now we didn't win  
13 the Borough of Staten Island but we got more votes  
14 because they liked Fair Share.

15 COUNCIL MEMBER HALLORAN:

16 Absolutely. Well I'll just refer back to  
17 President Kennedy's famous quote, every mother  
18 would want their child to be president, they just  
19 don't want them to be a politician along the way.

20 I understand that as you were  
21 developing this notion and you were keeping in  
22 mind the idea of minority disproportionate  
23 servicing being one, but literally, in trying to  
24 number two, it really has become Borough  
25 disparity. And the fact that there's this

1  
2 Manhattan-centric and, you know, I just made the  
3 mistake of gathering some data about capital  
4 expenditures across the City over the last ten  
5 years. And to say that there is disproportion is  
6 mildly an understatement.

7 It's almost a two to one spending  
8 between the entirety of the outer boroughs and the  
9 infrastructure of the inner borough.

10 MR. SCHWARTZ: Hmm.

11 COUNCIL MEMBER HALLORAN: So are  
12 there things that you would say we could do in  
13 this vein to make it better? To have Fair Share  
14 more directly plugged in and functional?

15 MR. SCHWARTZ: Well you do have the  
16 ultimately budget power. That's relevant. I mean  
17 unfortunately, I think the budget debate has  
18 turned into things that are sort of on the margins  
19 instead of going to the heart of the matter. But  
20 you raised something there that I don't know the  
21 facts but if that's true that goes to the heart of  
22 the matter. So your budget powers are important.

23 COUNCIL MEMBER HALLORAN: I'm going  
24 to yield back, Mr. Chairman, but I just want to  
25 say that in 1989 you took an incredible burden.

2 You handled it very, very well. I wish you had  
3 done more because you are, as you say, the last  
4 independent Commission that has functioned. Our  
5 last one was not. And I would also note that your  
6 Commission looked at the foundational elements of  
7 the Charter. Most of the Charter revisions since  
8 then have been things that are not foundational--

9 MR. SCHWARZ: [Interposing] Right.

10 COUNCIL MEMBER HALLORAN: --they  
11 have enshrined in a permanent status things which  
12 are supposed to be legislative functions later on.  
13 And the disparity between the executive and  
14 legislative powers has grown so disproportional  
15 that I believe we're dysfunctional. And I  
16 appreciate the work that you did. Thank you Mr.  
17 Chair.

18 CHAIRPERSON LANDER: So one thing I  
19 just want to add in relationship to budget, the  
20 idea of the framework as it was set out first in  
21 the Charter and then in the rules was that the  
22 citywide statement of needs and the updating of  
23 the atlas and gazetteer, a word I had not learned  
24 before preparing for this hearing, that those are  
25 supposed to come out when they do in part to

2 inform our review of the Preliminary Budget.

3                   And I'm pleased that this year at  
4 least the Council is acting in that way in its  
5 response. People will have seen--we had a press  
6 conference prior to this hearing, not only  
7 complaining about the Administration's  
8 nonparticipation in this hearing but focusing on  
9 the withdrawal of funding in the Preliminary  
10 Budget for the marine transfer stations in  
11 Manhattan. And the Council has used its  
12 Preliminary Budget response not only to talk as we  
13 typically do about Expense Budget items, the cut  
14 of child care and other things, but specifically  
15 to criticize the withdrawal of funding in the  
16 Capital Budget for those transfer stations.

17                   So there's more we can do there  
18 obviously on the budget side but that's at least  
19 one example of the Council seeking to use the  
20 budget power in pursuit of these goals.

21                   COUNCIL MEMBER HALLORAN: Something  
22 that unites us, Republicans and Democrats, all  
23 five of us.

24                   CHAIRPERSON LANDER: All right. I  
25 have Council Member Reyna and then Council Member

2 Williams and then we'll move onto the next panel.

3 COUNCIL MEMBER REYNA: Thank you  
4 Mr. Chair and I just want to echo my colleagues'  
5 sentiments in you having this hearing. Fair Share  
6 is near and dear to our hearts in Williamsburg  
7 Greenpoint and Bushwick, considering we're one of  
8 those minority communities that had been suffering  
9 these issues of inequities.

10 And I wanted to just review a few  
11 of the issues that we know in the last ten years  
12 we've gained. Homeless shelters where Bellevue  
13 was shutting down, Williamsburg, Greenpoint and  
14 Bushwick were becoming the home to the Bellevue  
15 homeless shelter that at one point had 1,000  
16 homeless people are now distributed amongst my  
17 district. Whether it's Community Board 1 or  
18 Community Board 4. So from Manhattan, we receive  
19 in Brooklyn.

20 I question what happened to the  
21 Charter revision and the Fair Share language that  
22 City Planning was supposed to adhere to. The  
23 issue of power plants: we have--I don't know  
24 specifically the number, I can't remember off the  
25 top of my head, but that was one of the major

1  
2 issues that I remember being, you know, crammed  
3 for environmental justice by local organizations  
4 such as El Puente for Peace and Justice who were  
5 dealing with these issues when I was a child and  
6 fighting for kids that are now adults in trying to  
7 understand why are we the dumping ground.

8           The issue of Radiac, biohazard  
9 storage facilities in our district, where, you  
10 know, in the middle of a residential neighborhood,  
11 Radiac is still in effect. And we thought we were  
12 getting closer to taking this facility and finding  
13 a different location. And we failed in the last  
14 attempt at the State level.

15           And then obviously the grandest of  
16 all inequities, 16 waste transfer facilities  
17 processing waste, 70% of which are commercial  
18 waste from Manhattan. Private facilities.

19           So you take the aggregate of all of  
20 this in one or two Community Boards, just in my  
21 district alone, that's a lot to bear. And now I  
22 don't understand how do we move forward to empower  
23 communities that suffered these inequities, you  
24 know, are now being gentrified on top of  
25 everything else. Now they're the sexiest

1  
2 neighborhoods to live in.

3 But yet we still deal with these  
4 issues and we've lost the most valuable of spaces  
5 because as Council Member Arroyo had alluded to  
6 manufacturing space is hoarded as real estate to  
7 either provide these uses or convert them into  
8 illegal lofts, loft dwellings of which, you know,  
9 So Ho was created, you know, Tribeca was created,  
10 Greenwich was created. And so they were spared  
11 all these facilities due to the illegal  
12 conversions.

13 So, you know, I'm trying to  
14 understand what is the power we have? Because if  
15 we pass our own budget the Mayor decides not to  
16 spend the money. And so the power of budget is  
17 not really an answer. We're left with probably  
18 more damage as collateral damages because we're  
19 passing our own budget is the fact that the  
20 executive has the ultimate power whether or not to  
21 spend that budget as voted on.

22 The issue of laws, well laws are  
23 only as good as they're enforced. So what's the  
24 use of providing a foundation at the Charter  
25 Revision Commission level and I do appreciate all



2 the work you were able to accomplish during those  
3 particular hearings and the public input that was,  
4 you know, afforded the opportunity, but City  
5 Planning was responsible for mapping all of this  
6 out, correct?

7 And today I don't know that the  
8 City Planning did everything they could within  
9 their enforcement powers to deal with a lot of  
10 these issues. And today our communities is still  
11 suffering, further more than when it used to,  
12 because as we get one step closer, we're taking  
13 three steps backwards.

14 For instance the SWMP plan. So  
15 today we have a SWMP plan we negotiated. We dealt  
16 with siting issues. We have a moratorium on  
17 Council Member Arroyo's district and mine which  
18 are the most overburdened communities. And yet  
19 the SWMP plan and as far as those sitings are  
20 concerned mean nothing if this is pushed into the  
21 out years.

22 And we deal with the issue of MTSS  
23 being challenged in court so there's delays that  
24 are contributing to all of this. Because  
25 Manhattan doesn't want these particular MTSS that

2 are going to be run by the City. And yet we have  
3 alternate sitings for private facilities, like  
4 Waste Management, to continue processing waste in  
5 our communities in Council Member Arroyo's and my  
6 own.

7 So the private facilities are  
8 moving forward but all of the City facilities are  
9 not. And where is the equity in that? And how do  
10 we move forward with the Administration, keeping  
11 their commitment? We have no budgetary power and  
12 we have no legislative power if the executive is  
13 not going to be a willing partner in keeping their  
14 end of the bargain.

15 So I said a mouthful. It was a  
16 statement. But, you know, you're a man of wisdom.  
17 You've seen it all. I don't understand where to  
18 move forward if not depending on a partnership  
19 that is true to what is being negotiated.

20 MR. SCHWARTZ: You know I think you  
21 probably have more budgetary powers and more  
22 legislative powers than you may think you have.  
23 And, you know, an aggressive Council could look  
24 harder at how it exercises both those powers.

25 COUNCIL MEMBER REYNA: And I'm

2 sorry, Mr. Chair, you know, there was a budget  
3 that was passed by the previous body before term  
4 limits. And I only hear of the worst case  
5 scenario. I didn't hear any of the best practices  
6 that came out of that particular budget passing by  
7 the Council. And so if you have any clue as to  
8 what benefits did that bring--?

9 MR. SCHWARTZ: [Interposing] I'm  
10 not your best witness on that. You need someone--

11 COUNCIL MEMBER REYNA:  
12 [Interposing] Right.

13 MR. SCHWARTZ: --who brings it up  
14 to date more than I do.

15 COUNCIL MEMBER REYNA: Right. So,  
16 you know, I just find it unfair to say that we  
17 have budgetary powers because in the end it's the  
18 Executive who has the power to spend the money.  
19 Thank you.

20 CHAIRPERSON LANDER: Thank you.  
21 Council Member Williams.

22 COUNCIL MEMBER WILLIAMS: Thank you  
23 Mr. Chair. Thank you Mr. Schwartz for the  
24 testimony and for the work you did 35 to 51 is  
25 probably the reason why I'm here. So thank you

2 very much for that. And I note my colleague Wills  
3 is not here yet. I know one of the reasons DHS  
4 might be gun-shy now is because of two scathing  
5 reports that just came out showing that  
6 homelessness has risen 37%, an all-time high,  
7 under Mayor Bloomberg, as well as ABC had done a  
8 video report showing the Department of Homeless  
9 Services turning people away at a rate of about  
10 63%, making them sleep on trains and a whole bunch  
11 of stuff, families with babies. It's pretty  
12 horrible. So maybe they're regrouping.

13 Also I prefer to be called elected  
14 official as opposed to politician.

15 MR. SCHWARTZ: Okay, I get that  
16 [laughing].

17 COUNCIL MEMBER WILLIAMS: Thank  
18 you. So I know that, you know, I think thanks to  
19 the work you've done, I always look at this word,  
20 better, so 22 years ago I guess certain things  
21 were worse like we have more representation now  
22 than we did. But when I look at the impact of it,  
23 it still troubles me because I think if we were 22  
24 years earlier, 50 years earlier, 60 years earlier,  
25 we'd probably still find some similar things,

2 black, brown, poor people are always suffering.

3 MR. SCHWARTZ: It's true.

4 COUNCIL MEMBER WILLIAMS: So  
5 they're the poorer, the most violent, they get the  
6 least services, they're the least educated. So my  
7 primary questions revolve around well how do we  
8 get to the root of that? Is there more things  
9 that we can do in the Charter? What is it--it  
10 seems sort of simple to me. I have four  
11 possibilities of why this could be. Black, brown  
12 and poor people are inherently dumber and violent--  
13 er is the only thing I can think of. Second--

14 MR. SCHWARTZ: I reject that one  
15 Mr. Williams--

16 COUNCIL MEMBER WILLIAMS:  
17 [Interposing] Okay. Just putting that one out as  
18 a possibility 'cause--

19 MR. SCHWARZ: [Interposing] Yeah.

20 COUNCIL MEMBER WILLIAMS: --I don't  
21 understand. Then there's either blatant racism or  
22 classism. There's ignorance of the--well the  
23 third would be ignorance of the racism, classism  
24 that exists; that I believe now is systemic and  
25 systematic. It's kind of just spinning itself.

2 Or an unwillingness to address it. So, you know,  
3 which one of those four is it primarily? And how  
4 do we get to the root of that?

5 MR. SCHWARTZ: I would say it's the  
6 third and the fourth of yours, most likely.

7 COUNCIL MEMBER WILLIAMS: Any  
8 possible ideas of how we can get to the root of  
9 that?

10 MR. SCHWARTZ: New Charter  
11 Commissions are dangerous because they've not gone  
12 in thoughtful ways. So I don't--and more over  
13 mayors, Ed Koch was unusual, he appointed 15  
14 people, 7 came from recommendations from other  
15 elected officials, and we all were independent.  
16 And more recently the people that followed him  
17 have not--so I think Charter Commissions are an  
18 unusual thing and probably are more dangerous.

19 So I think you guys, in this  
20 legislature, going to the maximum on your powers  
21 and then using the force of public opinion which I  
22 think does have power. I mean on the non-  
23 Manhattan boroughs versus Manhattan, that story  
24 has a lot of political power. And on the poor  
25 people, the minority people getting treated

2 unfairly, that has power too.

3                   So I think the force of public  
4 opinion which needs to be helped, I mean reporters  
5 don't, you know, out of the goodness of their  
6 heart pluck an issue out of the sky, they need to  
7 be helped. And I do think the Council has more  
8 powers that it could use.

9                   COUNCIL MEMBER WILLIAMS: I'm  
10 always trying to explore that. I would love to  
11 sit down and discuss--I'm a freshman, so there  
12 could be some things I'm missing.

13                   MR. SCHWARTZ: Uh-huh.

14                   COUNCIL MEMBER WILLIAMS: With the  
15 budgetary, I know that I do have similar concerns.  
16 Last year I was pushing very hard to reject some  
17 of the things that were being forced upon us. And  
18 what I was told that Giuliani chose not to spend  
19 the budget when the City Council did pass their  
20 own budget. And people suffered. So I'm now  
21 trying to figure out is there another way to go  
22 about that? Is that the logical conclusion of  
23 that? And I would love to push our powers in a  
24 legislative way--

25                   MR. SCHWARTZ: [Interposing] In

2 fact there are trades. You can refuse to  
3 appropriate money for something particularly  
4 desired by a mayor of the mayor persists--a mayor  
5 persists in not spending the money you--

6 COUNCIL MEMBER WILLIAMS:

7 [Interposing] You can Bloomberg.

8 MR. SCHWARTZ: Which ever.

9 COUNCIL MEMBER WILLIAMS: Yeah.

10 MR. SCHWARTZ: It was usually--

11 CHAIRPERSON LANDER: [Interposing]

12 Hypothetical--

13 MR. SCHWARTZ: --better to say

14 mayoralty instead of mayor. But--

15 COUNCIL MEMBER WILLIAMS:

16 [Interposing] And then--

17 Mr. SCHWARTZ: --did you catch, I

18 did do elected official there.

19 COUNCIL MEMBER WILLIAMS: Thank

20 you. [laughing]. And lastly is there one thing

21 in the Charter that we can look at that can help

22 decentralize the power in the Mayor?

23 MR. SCHWARTZ: I'd have to think

24 about that a little but whether there's one thing.

25 So your Chairman could follow up with questions



2 from many of you to me and I could consult some  
3 good colleagues and so forth.

4 COUNCIL MEMBER WILLIAMS: That  
5 would be great. Thank you.

6 CHAIRPERSON LANDER: Thank you very  
7 much. We really appreciate your taking the time.  
8 I think it took a little while but I think  
9 remembering sort of what the goal was here and  
10 where it came from and giving colleagues a chance  
11 to talk about it is valuable.

12 And one thing that I just want to  
13 say is we are committed, again as I said earlier,  
14 the goal is to begin the process today. And we've  
15 got a lot of great people signed up to testify so  
16 I hope others will stick around as they can to  
17 listen but in any case I will be here, our counsel  
18 will be here, the Land Use Committee staff will be  
19 here. Our goal is to find those places where  
20 Charter Revision is not what's necessary but where  
21 the strengthening of local laws can move forward,  
22 update this, provide some additional teeth and  
23 opportunity to get closer to that Fair Share  
24 vision. So thank you very much for being here.

25 MR. SCHWARTZ: I enjoyed meeting

2 all of you. Thank you.

3 [Off mic comments]

4 CHAIRPERSON LANDER: We're going  
5 to--

6 [Applause]

7 CHAIRPERSON LANDER: Thank you very  
8 much Mr. Schwartz.

9 [Applause]

10 CHAIRPERSON LANDER: We're going to  
11 go now into panels. I'm going to start calling  
12 four people at a time. Because we have a lot  
13 signed up to testify, we will go to the clock.  
14 We'll give three minutes. I'm not going to be  
15 harsh about it and we'll have time for Q & A but I  
16 do want to provide as many people an opportunity  
17 to testify as possible.

18 We are joined by, one, District  
19 Manager of a Community Board who have a Charter-  
20 mandated role in the process, to the first panel  
21 will include Craig Hammerman from Community Board  
22 6; Eddie Bautista from the New York City  
23 Environmental Justice Alliance; Kelly Terry from  
24 the Point CDC; and Albert Butzel from the Greater  
25 Jamaica Development Corporation. Yeah, can we fit

2 four chairs at the table?

3 MR. ECONOMOU: Yes.

4 CHAIRPERSON LANDER: Super. Thank  
5 you very much.

6 [Pause, Witnesses getting settled]

7 MR. CRAIG R. HAMMERMAN: Thank you  
8 Mr. Chair and members of the Committee. My name  
9 is Craig Hammerman and I'm the District Manager  
10 for Brooklyn's Community Board 6 where I've  
11 actually worked for over 21 years now. So I've  
12 actually matched in tenure--

13 SERGEANT AT ARMS: [Interposing]  
14 Quiet please.

15 MR. HAMMERMAN: --the Fair Share  
16 provisions that we're here to talk about today.  
17 And I'd like to just sort of quickly run through  
18 what I see as three primary problems and  
19 challenges on Fair Share, reflecting back on the  
20 last 20 years, certainly from my own perspective.

21 First is the category of  
22 exemptions. And I think that that was already  
23 touched on as have the other two for that matter.  
24 Federal, State and certain contracted services and  
25 facilities are exempt from Fair Share. Despite

2 the 2010 Charter Commission's finding and mandate  
3 that they now must appear on a map, this can and  
4 still has led to a clustering and lopsided  
5 distribution of services in certain areas.

6 For example the New York State of  
7 Alcoholism and Substance Abuse Services oversees  
8 the State's methadone maintenance programs. If you  
9 were to look at where these services are located,  
10 there are communities that do not have any direct  
11 access to this vital service and communities that  
12 have multiple facilities in their communities  
13 districts. Every single community has some level  
14 of demonstrated need for this service.

15 Doesn't every community have a  
16 social obligation, a responsibility to provide a  
17 level of service proportionate to their  
18 demonstrated need? Why are Federal, State and  
19 certain contracted services and facilities exempt  
20 from a Fair Share analysis? Even if these  
21 agencies aren't subordinate to City government,  
22 shouldn't City government still have some  
23 responsibility for performing an analysis not just  
24 putting a dot on a map and making its findings  
25 publicly known? Perhaps if such an analysis were

2 performed and shared publicly the Federal and  
3 State agencies in particular would be more  
4 inclined to follow the principals of Fair Share  
5 even if they were under no obligation to do so.

6 The second category is that of  
7 enforcement which I don't think we've directly  
8 addressed here. What penalties exist for failure  
9 to follow or use the City's Fair Share criteria?  
10 There are no Charter police. If a group believes  
11 the City failed to apply Fair Share criteria and  
12 the City disagrees the only recourse is to sue the  
13 City as an Article 78 challenge. And if a suit is  
14 successful, what would it accomplish? It would  
15 not reverse the decision of the City agency, it  
16 would only force them to provide further written  
17 justification for the decision that they've  
18 already made.

19 There is no enforcement mechanism  
20 to ensure that the spirit of Fair Share is upheld  
21 in good faith by government but there should be.  
22 While enforcement still won't guarantee that a  
23 good faith effort will be made, at least there  
24 will be some consequence when a City agency fails  
25 to act.

1  
2                   The third category is that of  
3 rebalancing services. 20 years ago we were  
4 worried about what kinds of negative services were  
5 coming to the communities, now we're dealing with  
6 an austere budget time where the City is closing  
7 down services that communities want. I'm nearly  
8 done. In recent times some City agencies have  
9 selectively opted to ignore not only Fair Share  
10 criteria but also other public planning tools that  
11 were similarly created to keep the public engaged  
12 in the process with the City such as the Citywide  
13 Statement of Needs to deal with some of the  
14 difficult budgetary decisions being made by  
15 agencies.

16                   Under the last Administration, my  
17 community had to deal with the reality of a fire  
18 engine company closure which was announced and  
19 would have been implemented without a Fair Share  
20 analysis which only came after we demanded one.  
21 In the end the agency prepared the analysis simply  
22 to satisfy the process rather than to engage in  
23 the spirit of public planning. Currently my  
24 communities have been dealing with announced  
25 closures of day care centers and senior centers,

2 all of which are being presented as agency  
3 decisions or actually pronouncements before any  
4 public engagement process has ever begun.

5           Neither the Administration for  
6 Children's Services nor Department for the Aging  
7 had contacted us about their decisions to close  
8 facilities before announcing their plans to the  
9 public. We read about these decisions in the  
10 media first. Technically these decisions are  
11 subject to the Fair Share criteria. Practically  
12 the agency heads chose to ignore the criteria in  
13 reaching their decisions.

14           So 20 years ago Fair Share was off  
15 to a good start. It offered the public a  
16 transparent way of engaging in a public planning  
17 process that had common guidelines, a structured  
18 framework, and produced predictable products. But  
19 if we don't apply the lessons we've learned and  
20 update it to reflect our practical experiences  
21 over the last 20 years, then we should expect to  
22 see the rift between the public and government  
23 grow further apart.

24           Government decisions about services  
25 will be increasingly made based on budgetary

2 conditions rather than rational planning  
3 decisions. Agencies will continue to make  
4 decisions without engaging the public as part of a  
5 rational planning process. And communities will  
6 continue to experience and over saturation and now  
7 even a vulnerability when services are added or  
8 subtracted to their districts respectively.

9 Thank you for starting this  
10 conversation. It reflects a need to revisit some  
11 of the provisions of the 1989 Charter Revisions  
12 which were cutting edge in their day but that was  
13 a full generation ago. I'm hopeful that today  
14 marks a new beginning and I stand ready to  
15 continue to contribute to this discussion as it  
16 unfolds.

17 CHAIRPERSON LANDER: Thank you.

18 MR. EDDIE BAUTISTA: Hi. My name's  
19 Eddie Bautista. I'm the Executive Director of the  
20 New York City Environmental Justice Alliance. I  
21 want to congratulate the Council for having a  
22 long-overdue hearing on this. I was very  
23 heartened to hear Commissioner Schwartz--  
24 Commissioner Schwartz, the former Corp Counsel  
25 Schwartz talk about the possibilities for the City



1  
2 Council to actually legislate some stronger Fair  
3 Share provisions because I can tell you  
4 unequivocally that the Fair Share provisions from  
5 the '89 Charter have been a miserable failure in  
6 the last 20 years.

7           In 1990 I was a 25-year old, young  
8 organizer, got hired by New York Lawyers to help  
9 start a bunch of reform, recommendations as the  
10 City was looking at implementing Fair Share. And  
11 there were loopholes. Enormous loopholes that  
12 were created in the post-Charter Commission  
13 regulatory implementation of Fair Share.

14           Ironically that same year was when  
15 the City Council passed the Fair Share Siting Law  
16 of Transfer Stations, Local Law 40 which mandated  
17 that transfer stations be sited fairly. In 1996  
18 the City announced they were going to close the  
19 Fresh Kills Landfill. And what that means was the  
20 communities of Williamsburg, the South Bronx,  
21 Sunset Park, Red Hook, all environmental justice  
22 communities of color, were inundated, not just by  
23 commercial waste but by now the City's residential  
24 waste. So you had from 1996 through 2001, not  
25 just 26,000 tons per day of commercial waste but

2 an additional 12,000 tons per day of residential  
3 waste moving to these same communities.

4 All of those contracts should have  
5 been run through a Fair Share process because  
6 these were City contracts. None of them were. So  
7 we got to a point where communities, 80% of the  
8 City's solid waste was being handled in  
9 communities where 80% of more were people of  
10 color. By the way, minority, I don't get how you  
11 get minority when we're the majority of the City  
12 but--

13 COUNCIL MEMBER WILLIAMS:

14 [Interposing] Let's leave that alone.

15 MR. BAUTISTA: --I will leave it  
16 alone for now but the communities of color, 80% of  
17 the City's waste were handed in communities that  
18 were 80% of more people of color. Also the  
19 communities with the skyrocketing asthma rates and  
20 other public health indicia. It is a public  
21 health crisis that Fair Share attempted to stem  
22 and could not.

23 We tried to get Fair Share fixed in  
24 the 2010 Charter Revision Commission. Could not,  
25 in part because the Department of City Planning

2 was staffing the Commission, giving them  
3 recommendations, and we were lucky that we got the  
4 minimal mapping requirement. But it does nothing  
5 in terms of all the private, Federal and State  
6 facilities as Council Members Arroyo and Reyna  
7 were just mentioning.

8                   There is--we've heard for years  
9 that the Council may not be able to fix this  
10 because of supposed curtailment of mayoral  
11 authority. But if the former Corporation Counsel  
12 seems to think that there are some legs there,  
13 then I think we should absolutely explore it.

14                   And finally I think that probably  
15 the main thing this Council can do is what you  
16 were mentioning, Council Member Lander, that the  
17 City's health data that was hard to collect 20  
18 years ago, and I'll wrap up, is easier now. You  
19 have GIS mapping. You have multiple agencies that  
20 have across the board responsibilities for  
21 enforcement of permitting authority.

22                   There should be one place New  
23 Yorkers can go to see where all the asthma rates  
24 of the City are and overlay that with where all  
25 the permitting, air pollution and toxic release

2 inventories and all the different government  
3 agencies, whether it's DEP or the Fire Department,  
4 which handles hazardous material permitting and  
5 enforcement, there has to be one place where  
6 people can go so that we can tell the difference  
7 between a true environmentally impacted community  
8 and a NIMBY community. So we welcome the  
9 Council's involvement.

10 MS. KELLI TERRY SEPULVEDA: Oh.  
11 I'm sorry, pardon me. I was reading my notes.  
12 Thank you so much for having us. I share in this  
13 very substantive debate. And thank you to our  
14 local Council Member for representing us so well  
15 on this issue. My name is Kelli Terry Sepulveda  
16 and I'm here to deliver testimony on behalf of the  
17 Point Community Development Corporation. But in  
18 full disclosure, we're proud members of NYCEJA and  
19 Hunts Point as well.

20 So the Point CDC, we're a nonprofit  
21 organization dedicated to youth development and  
22 the economic revitalization of the Hunts Point  
23 Section of the South Bronx. We believe that our  
24 area's residents, their talents and aspirations  
25 are the Points greatest assets. And our mission

1  
2 is to encourage arts, local enterprise,  
3 responsible ecology and self-investment in the  
4 Hunts Point Community. The Point is a member of  
5 the New York City Environmental Justice Alliance--  
6 as I said before.

7           And essentially I, you know, to add  
8 on to the health statistics and the environmental  
9 stats, I could do that. I could sit here and list  
10 the 15 waste transfer stations, the Hunts Point,  
11 you know, the fact that we have DEP's wastewater  
12 treatment facility and that we have NYOFCO that  
13 just closed but we have a contract that's yet out  
14 to bid, yada, yada, yada, yada. I'm not going to  
15 do that.

16           I'm going to--what folks back home  
17 really wanted me to come and talk about today was  
18 to tell a story. And to tell our story and our  
19 community's perspective on this.

20           So in 1989 as we all heard, since  
21 we're going back in the day, the City Charter was  
22 amended to include language on Fair Share in our  
23 neighborhoods so our hope from an alleviation of  
24 many of the burdens that we faced. But just as  
25 quickly as the Department of City Planning created

2 a rule around the required Annual Statement of  
3 Needs by allowing the City to propose any facility  
4 siting or expansion whenever it chooses simply by  
5 filing an amendment to the previously approved  
6 Statement of Need, thus making the entire process  
7 toothless and meaningless.

8 A few years later we became the  
9 unfortunate and unwilling host of NYOFCO which  
10 went through zero process, a privately owned  
11 sewage processing plant that polluted our air and  
12 emitted noxious odors for over 16 years. This  
13 happened while a DEP sewage treatment plant was  
14 already located two blocks away and one that would  
15 undergo expansion a decade later although that's  
16 been put on hold for now.

17 A few years after NYOFCO, when  
18 Fresh Kills was scheduled to close, we saw a  
19 proposal by the American Marine Rail for a massive  
20 waste transfer station that would bring most of  
21 the displaced garbage to our waterfront in Hunts  
22 Point. The proposed location was just yards away  
23 from NYOFCO. The community fought back and we  
24 were able to stop that facility.

25 But when Fresh Kills did close and

2 the waste handling system was further privatized,  
3 we saw an immediate influx of over 15 waste  
4 transfer stations. And they found their homes in  
5 district 1 and 2 in the South Bronx. And this is  
6 just waste.

7 Let's not forget that we are  
8 talking about the same neighborhood that was  
9 destroyed by, sorry, Robert Moses for the City's  
10 transportation infrastructure, surrounded by three  
11 major highway arteries. And that houses the  
12 largest food distribution center in the world for  
13 the City's food infrastructure. And it has a  
14 power plant and the City's energy infrastructure.  
15 And until recently it was home to four facilities,  
16 incarcerating both our adults and our children.

17 So needless to say, you can imagine  
18 our shock when the very same administration we  
19 stood beside in 2006 released a recent budget  
20 proposal to delay all funding for implementation  
21 of the sold waste management plan. And I just  
22 want to thank everyone who came out earlier to  
23 help us connect the dots here because, yes, this  
24 is about the principles of Fair Share and what  
25 does one have to do with the other? Well it's the

1  
2 principles. And how are we going to support the  
3 Council and this Administration in making sure  
4 that these principles are properly legislated.

5 If you truly care about Fair Share,  
6 you would demand a full restoration of capital  
7 funding to implement the Solid Waste Management  
8 Plan. Delayed funding might as well be no funding  
9 at all. Just to resonate that.

10 And the Council has the power to  
11 pass legislation to strengthen Fair Share by  
12 mandating all facilities, sitings, expansions and  
13 reductions be properly identified as, you know,  
14 we're talking about, the mapping and with the  
15 technology and the confluence of GIS. You know,  
16 there are no reasons why we can't have TRI indices  
17 and things like that be really displaced and fully  
18 transparent to allow all of us to make better  
19 decisions and to see what the relationship it  
20 because oftentimes as our Councilwoman pointed  
21 out, yes, this is a City process but in a  
22 particular area like Hunts Point you're dealing  
23 with, you know, State facilities as well, which  
24 then also have to deal with over sighting and  
25 permitting policies that are handed down from the



2 Federal government.

3                   Okay so what we're saying is that  
4 it takes a village. And, you know, I will leave  
5 this with just saying that I want to, again,  
6 comment the Council for taking up this issue even  
7 at a time where we're just completely  
8 oversaturated. And I just have to say,  
9 representing Hunts Point here today, but a girl  
10 born and raised in High Ridge. We're getting hit  
11 on all ends. And, you know, I think it's  
12 important today that as we walk away, we  
13 understand the drastic impacts that sort of this  
14 inability for us to see holistically what our  
15 decisions, what the unintended consequences of our  
16 policies are. And we have the power to do  
17 something about it. You have the power to do  
18 something about it. And we stand by you and look  
19 forward to see how we can rectify this moving  
20 forward.

21                   CHAIRPERSON LANDER: Thank you.

22                   MR. ALBERT K. BUTZEL: Thank you  
23 Mr. Chairman, members of the Council. My name is  
24 Al Butzel. I'm here representing the Greater  
25 Jamaica Development Corporation and with me is

1  
2 Justin Rodgers who's the Director of Economic  
3 Development at Greater Jamaica.

4 Greater Jamaica is one of New  
5 York's oldest not-for-profit local development  
6 corporation. It was founded in 1967 and it has  
7 stressed economic development within its mission  
8 of improving the community. It has also been in  
9 the marketing of downtown Jamaica and trying to  
10 create economic development there.

11 Greater Jamaica's idea of downtown  
12 Jamaica is a modern, efficient mixed-use regional  
13 center offering a pleasant and product experience  
14 for those who work, live and visit there. Over  
15 the years it's made considerable progress in  
16 pursuing these goals. In 2007 this Council wisely  
17 adopted an extensive rezoning of the downtown,  
18 allowing Jamaica to benefit from the unmatched  
19 transportation infrastructure that it enjoys.  
20 However attracting private capital continues to be  
21 a serious challenge. And we are frequently told  
22 that the perception of the downtown is the single  
23 greatest obstacle to Jamaica's reaching the  
24 potential it has as an engine for new jobs and  
25 economic growth.

1  
2 Jamaica has long been the center  
3 for the provision of social services in Queens.  
4 And we are convinced that the aggregation of  
5 special needs populations, particular the  
6 homeless, is the major contributor to the negative  
7 perception of downtown. Jamaica is the home of a  
8 disproportionate number of homeless facilities and  
9 homeless populations that have been funneled into  
10 the downtown through City-supported construction,  
11 City subsidies and City contracts.

12 In a recent survey that we compiled  
13 drawing on public records, we found that out of 18  
14 homeless facilities in the 13 community districts  
15 of Queens, 10 of them or just under 60% are  
16 located in downtown Jamaica in Community Board 12.  
17 Similarly out of 1,900 homeless families in  
18 Queens, 700 or more than 35% are housed in  
19 downtown Jamaica and that doesn't include a lot of  
20 individual housing as well. No other community  
21 district in Queens has more than 2 homeless  
22 facilities or more than 475 homeless families.

23 And as I said, the record doesn't  
24 tell the whole story. This is just what we could  
25 find on the web. There are other facilities we

1  
2 know of.

3                   We come here today to report these  
4 numbers as evidence of a situation in which Fair  
5 Share under the City Charter and City Planning  
6 Fair Share Plans have failed to protect southeast  
7 Queens from being home to far more than its fair  
8 share of facilities service the homeless. This we  
9 think is reflective of the reality of Fair Share  
10 in the City. The language included in the Charter  
11 is laudable but it has no teeth. Neither it not  
12 the City Planning documents has accomplished a  
13 fair sharing of the shared burden instances of  
14 homelessness in our City.

15                   This is particularly dysfunctional  
16 in Jamaica where so much time and attention has  
17 been interested recently in planning and rezoning.  
18 And this has had significant implications for  
19 downtown zoning. There is no question that the  
20 prevalence of homeless facilities within a  
21 relatively narrow geographical area contributes to  
22 the negative perception of the downtown by  
23 visitors, shoppers, office workers, and potential  
24 tenants. During the day and into the evening the  
25 residents of these facilities are often hanging

2 out on or wandering the nearby streets. Their  
3 visibility and negative influence exaggerate the  
4 impacts of their numbers.

5 This in turn makes it more  
6 difficult to persuade businesses to locate in the  
7 area and developers to consider investments in  
8 downtown Jamaica. Spread among other community  
9 districts, the impact would be far less severe.

10 And it also has significant impacts  
11 on the homeless themselves. And I've described  
12 that in the testimony. And just to move on I'll  
13 just say it stigmatizes them.

14 And we then come to the question of  
15 what is needed. In our view, what we think is  
16 needed, is to add to the Fair Share provisions of  
17 the Charter. And in this I echo what Fritz  
18 Schwartz said. What is needed is legislation  
19 which is within the province of this Council that  
20 forecloses excessive clustering of homeless  
21 facilities and homeless populations. And the same  
22 can be said for other unpleasant burdensome uses.

23 We believe that such legislation  
24 could be as simple as placing a percentage limit  
25 on the number of such facilities and populations

2 supported in any way by the City whether by  
3 contract or subsidy that could be located in any  
4 particular area defined by a community district.  
5 This would not require any single district to  
6 share some of these burdens but it would require  
7 that no single district be obligated to share  
8 burdens well beyond what's fair for it.

9           And we are working with Council  
10 Member Wills to try to develop legislation for  
11 this. On behalf of Greater Jamaica we really urge  
12 the Council to move on this. It is something  
13 specific that can be done. It's not a generality  
14 about Fair Share. It's taking a Fair Share  
15 concept and moving it into a specific place.  
16 Thank you.

17           CHAIRPERSON LANDER: Thanks to all  
18 four of you for testifying. A couple of questions  
19 and then, yeah. So my first question is have any  
20 of you sought to use any of the processes provided  
21 under the Fair Share rules or the Charter in your  
22 history to comment or, you know, on the Citywide  
23 Statement of Needs, to attend a Fair Share public  
24 hearing, to read and comment on the Fair Share  
25 analysis in a siting? And if so, could you tell

1  
2 us a little about how that went and what it  
3 achieved or didn't.

4 MR. HAMMERMAN: So, yes, we have to  
5 answer your question. Community Board 6 in  
6 Brooklyn, with Mayor Giuliani at the helm, did  
7 object to the proposed closure of Engine Company  
8 202 on Degraw Street. And when we raised the  
9 issue that this was not subject to Fair Share  
10 analysis that this was not something that was  
11 disclosed in the Citywide Statement of Needs, and  
12 that no environmental review had been conducted to  
13 show what the net effect would be of closing a  
14 fire company, they proceeded to effectively do all  
15 of that to prop up their decision. And we did  
16 actually get the document that we had asked for.

17 But the fire company closed and  
18 remains closed to this date. Similarly under the  
19 current Administration, last year we did object  
20 using Fair Share as one of the reasons along with  
21 the Citywide Statement of Needs, and the failure  
22 to conduct an environmental review to the proposed  
23 closure of day care centers. There were 16 day  
24 care centers slotted to be closed citywide, 4 of  
25 them were in my district. So 25% of the citywide

2 closures were all in Brooklyn Community Board 6  
3 and 3 of them were adjacent to public housing  
4 projects.

5 So thanks to the intervention of  
6 our City Council Members we did get a reprieve of  
7 one year but we did use this as an excuse to  
8 object on procedural grounds and, of course, the  
9 agency did come back to us with a Fair Share  
10 analysis that they later conducted, again, to  
11 support the decision that had already been made.  
12 So it doesn't seem like it has really influenced  
13 the process, certainly to encourage a more good  
14 faith effort between the public and government in  
15 arriving at rational planning decisions.

16 MR. BAUTISTA: In 20 years of  
17 litigation, I'm only aware of 1 case where a  
18 community won a Fair Share lawsuit. It was Silver  
19 v. Dinkins, 1993. The Administration proposed  
20 building--it's funny, Sanitation again. It was  
21 the Sanitation Department proposed building a  
22 garage in Shelly Silver's district and the  
23 Assemblyman and others in the community sued  
24 because there was no notice in the Statement of  
25 Needs. And a judge found that they violated that.



2 But I think part of the problem, the reason why  
3 Community Boards rarely have these, if at all,  
4 these hearings is, I think something that--

5 MR. HAMMERMAN: [Interposing] Mm-  
6 hmm.

7 MR. BAUTISTA: --that Kelli  
8 mentioned which was, you know, the City agencies  
9 can simply, if after a Statement of Needs is  
10 issues, if they want to cite a facility, all they  
11 have to do is send a memo to the Community Board  
12 and their Fair Share responsibility is done. It's  
13 an enormous loophole that was created by City  
14 Planning after the Charter Commission implemented  
15 it and adopted it in 1989-90.

16 But just to give you two quick  
17 examples, again, I mentioned it earlier, when the  
18 Fresh Kills Landfill was slated to be closed, you  
19 had literally hundreds of millions of dollars in  
20 contracts from the City for the export of the--  
21 each Borough's solid waste, hundreds of millions  
22 of dollars. Fair Share rules say that if you  
23 spend \$50,000 or more on a City contract you're  
24 supposed to do Fair Share. There was never a  
25 single Fair Share review process for any of the

2 Borough's export of solid waste. That's one.

3 Two, under the City's Waterfront  
4 Revitalization Program, this is an actual City  
5 program, this is the waterfront policy,  
6 development policy for the City of New York, there  
7 is a portion of it called Significant Maritime  
8 Industrial Areas. There are only six of them in  
9 the City. And Significant Maritime Industrial  
10 Areas are designed to cluster polluting, heavy  
11 industrial and infrastructure uses in which of the  
12 communities: South Bronx, New Town Creek, Sunset  
13 Park, Red Hook. So what you have, by the same  
14 token, you have the Charter saying you have to  
15 follow Fair Share and you have a conscious City  
16 policy that encourages clustering and sets up  
17 these SMIA review processes in such a way where  
18 power plants, transfer stations, all of these, all  
19 they have to do is demonstrate that they're  
20 industrial and there is no further review of  
21 consistency with the Waterfront Revitalization  
22 Program.

23 I don't understand how the City  
24 could--that's such a gross violation of the  
25 Charter. That--well that's for another hearing.

2 CHAIRPERSON LANDER: Mm-hmm.

3 MR. BUTZEL: I'll just say we've  
4 done a lot of legal research and I just second  
5 what Mr. Bautista said. Nothing is going to  
6 really work with Fair Share unless and until the  
7 Council adopts legislation that sets out  
8 standards, however specific. They could be  
9 extremely specific like we're suggesting for  
10 homeless or anything else, no more than 20% of the  
11 like. Or they could be less specific. But the  
12 ball is really in your court so to speak because  
13 the Administration just regards Fair Share as a  
14 burden, you know? And as a political liability  
15 from their point of view. So the courts are no  
16 help because they say it's just a generality.  
17 There's nothing that we have to judge.

18 MS. SEPULVEDA: Nothing new to say  
19 other than to echo, you know, what I circled here  
20 was SMIA, you know, for us in particular, because  
21 I mean then, I mean if we had a nickel, right?

22 So, you know, then I also want to  
23 reflect, refresh our memory just back in July, a  
24 number of us just submitted testimony to the  
25 Charter, right, about how we feel about these

2 things overall. Which I think although is not--  
3 you know, I think a lot of those arguments are  
4 relevant to you today. So I have an extra copy.  
5 And I also encourage my colleagues to also dust  
6 the cobwebs off of that from last summer and just  
7 bring it back to the table. A lot of good points  
8 were raised there.

9 CHAIRPERSON LANDER: We've been  
10 joined by Council Member Levin from Brooklyn and  
11 rejoined by Council Member Palma. Council Member  
12 Levin has a question and then Council Member  
13 Arroyo.

14 COUNCIL MEMBER LEVIN: I was here  
15 before for a little bit--

16 CHAIRPERSON LANDER: [Interposing]  
17 Oh that's right.

18 COUNCIL MEMBER LEVIN: --I was  
19 hanging out in the back.

20 CHAIRPERSON LANDER: --you've been--  
21 -okay.

22 COUNCIL MEMBER LEVIN: I just  
23 wanted to follow up, Mr. Hammerman, because you  
24 mentioned the day care facilities. I just--it's  
25 not really question but just kind like I'd like to

2 follow up on it, that I recall that when they  
3 first informed all of us that these facilities  
4 that they were intending to close these  
5 facilities, they cited certain, you know, the  
6 shifting demographics in the neighborhood as like  
7 their rationale.

8                   And so it seems as if they're  
9 trying to have it both ways. A little bit of  
10 hypocrisy there that they're not willing to engage  
11 in a Fair Share analysis or at least willingly.  
12 And that yet they cite demographic information to  
13 substantiate their rationale for closing  
14 facilities in a neighborhood, beneficial  
15 facilities in a neighborhood. It just seems as if  
16 they're trying to have it both ways. That's just  
17 my only comment.

18                   MR. HAMMERMAN: Okay. I think  
19 you're absolutely right there except that they  
20 never notified us in the first place. This was  
21 something that we read about in the newspapers and  
22 then pursued the agency. The notification that we  
23 ultimately did receive, the Fair Share letter that  
24 we ultimately did get, if you were to read it and  
25 I challenge you to read it, and then explain to me

2 the rationale that they used for making the  
3 decision because despite having put pen to paper,  
4 it is still unclear what their rationale was.

5 I saw the same newspaper article  
6 that you did that somebody from the agency was  
7 quoted as saying that because of the shifting  
8 demographics in the community there was a feeling  
9 that these services were no longer needed to be  
10 provided, subsidized by the City of New York.  
11 However, you know, they're referring to a  
12 neighborhood that wasn't the subject of the  
13 closure.

14 COUNCIL MEMBER LEVIN: Mm-hmm.

15 MR. HAMMERMAN: The subject of the  
16 closure was in Gowanus, adjacent to Gowanus Houses  
17 and, you know, not Park Slope or some other  
18 portion of my district. So you've got me. I  
19 still don't know why they were making the decision  
20 and honestly it was never made clear to us despite  
21 our repeated protests and questions to try to  
22 unearth that.

23 COUNCIL MEMBER LEVIN: I would  
24 comment that I think what they were trying to do  
25 was tailor their rationale around their decision.

2 I mean clearly that's what was going on.

3 MR. HAMMERMAN: Right. It's used  
4 as an afterthought to prop up a bad decision that  
5 was made in the first place.

6 COUNCIL MEMBER LEVIN: Exactly. I  
7 couldn't say it better myself. Thank you.

8 COUNCIL MEMBER PALMA: Thank you  
9 Mr. Chair. No so much a question as a statement.  
10 First, again, to say thank you Mr. Chair and I  
11 look forward to ongoing conversation about how  
12 this Committee can advance the work that needs to  
13 be done. And to say thank you to you all for the  
14 work that you do. Kelli, always a pleasure to see  
15 you, and Eddie, it's been a while and you're still  
16 a young man as far as I'm concerned.

17 I won't say it to every panel but  
18 thank you for the work that you do to advance the  
19 discussion of environmental justice and that  
20 communities in our City for too long have been  
21 disproportionately affected by the things that no  
22 one else has. And my mantra is real simple. Not  
23 in my backyard does not apply. I say no more in  
24 my backyard. Because for far too long we've  
25 carried the burden for many, many of the things

2 that affect communities in a bad way. So thank  
3 you all for the work that you do.

4 CHAIRPERSON LANDER: thank you as  
5 well. And maybe leave you and also others here  
6 with--we have quite a few more people signed up to  
7 testify, with sort of a next step of thinking that  
8 we need to do. I think this panel talked in a few  
9 different ways about the frame--if you were to get  
10 more substantive, rather than just a process of  
11 hoops, but to try to think about it, where we have  
12 some more work to do to think about what that  
13 would look like.

14 And it's different for different  
15 kinds of facilities. For example, we did an  
16 oversight hearing last year in the General Welfare  
17 Committee on homeless facilities. And we asked  
18 the Homeless Commissioner and he said fairly  
19 directly we want to keep people as near to where  
20 they come from as possible so as not to disrupt  
21 their school, you know, participation. And so  
22 there is at least a debate there to be had. I'm  
23 not saying they all come from southeast Queens or  
24 the Bronx. But we had a sort of a dialog about  
25 that. And I, you know, asked, well it seems to me



2 what's causing the homeless problem is all the too  
3 expensive housing. So maybe we need the shelters  
4 right where the expensive housing is.

5                   Anyway. But, you know, that's  
6 different from, you know, waste transfer were  
7 obviously we do the opposite. Manhattan's got the  
8 waste and, you know, we don't make them process  
9 anything. On that one I think we might agree  
10 actually that communities or at least Boroughs  
11 ought to be responsible for processing the same  
12 share of the thing as they are producing of the  
13 thing. So I don't know that, you know, these are  
14 complicated questions. And if anyone has anything  
15 they want to say on it, okay, but I think this is  
16 more for going forward, if we're going to think a  
17 little more substantively about this, we'll need  
18 to do some thinking together. How we think about  
19 different kinds of bads and goods and how we would  
20 approach rules on this topic.

21                   MR. BUTZEL: I would agree with  
22 what you say and certainly that's the first thing  
23 that the HPD or the Department of Homeless  
24 Services is saying, you know. Well you have a lot  
25 in southeast Queens but that's where they come

2 from. That's what they say. The question is  
3 whether that's the case or not. And no  
4 legislation should be adopted without looking into  
5 what the realities of it are. But to just sit  
6 around and sort of generalize about how Fair Share  
7 is working, the answer is it isn't working. And  
8 if you want to change that, you're going to have  
9 to have hearings as Fritz Schwartz said and decide  
10 what's equitable and what's just--and then pass  
11 something that has teeth that people can enforce.

12 MR. BAUTISTA: From an  
13 environmental perspective, I think that siting is--  
14 --the problem with siting is that it's dealing with  
15 an inefficient unsustainable process in the first  
16 place, right? So the environmental justice  
17 movement has long said that, you know, we're the  
18 canaries in the coal mine, if you will. And I  
19 think that for us, you know, the siting battle was  
20 just a part of it.

21 I mean we've always--and Fritz  
22 Schwartz mentioned it exactly right that so long  
23 as these problems are foisted onto other  
24 communities, so long as it's not a five Borough  
25 problem, it's a three neighborhood problem, it's

2 the path of least resistance. And it's a lot  
3 easier for the City and the society to just say  
4 you know what it's somebody else's problem, we  
5 don't have to worry about it.

6 The beauty of the Solid Waste  
7 Management Plan and the equitable distribution of  
8 marine transfer stations is it doesn't allow the  
9 Upper East Side to look away and avert their  
10 glance. It gives everybody skin in the game. And  
11 that gets us to where we need to go which is as a  
12 society, a robust, waste reduction, waste  
13 recycling. From a power plant perspective, the  
14 siting of power plants, we should be repowering  
15 existing power plants, make them more efficient.

16 And so now in addition to like  
17 dealing with old, bad technology, we're now faced  
18 on the horizon with waste to energy facilities  
19 which are in many ways based on the same sort of,  
20 you know, modern but thermal and incineration-  
21 based technologies.

22 To that end and I'm going to leave  
23 that for Eric Goldstein to knock out of the  
24 ballpark, but there are some fact sheets that  
25 NYBERG wanted to testify but can't that speak to

1

2 this. But I think you hit the nail on the head.  
3 Environmentally, siting is the tail end of a  
4 series of just bad decisions that as a society we  
5 need to start dealing with this stuff, you know,  
6 worrying about our grandkids and not just about us  
7 today.

8 CHAIRPERSON LANDER: Thank you all-  
9 -

10 MS. SEPULVEDA: [Interposing] And  
11 I'm sorry, one last thing is, you know, the  
12 argument, you know, that the Department of  
13 Homeless Services gave to you, it sounds rather  
14 familiar. The only thing was it was coming from  
15 then the Department of--from Commissioner Horne  
16 actually, about the proposed 2,000 bed jail in  
17 Hunts Point. It was the same argument. We want  
18 to make visitation easier for you. We're doing  
19 you a favor. I just wanted to note that.

20 CHAIRPERSON LANDER: Thank you.

21 COUNCIL MEMBER LEVIN: Just one  
22 thing to add, Mr. Bautista, is that the SWMP plan  
23 can't be a great step forward if we defund it.  
24 Right. Yeah.

25 MR. HAMMERMAN: Actually from a

1

2 public policy perspective I think it's important  
3 to not think of fair in Fair Share as being equal.  
4 I think we need to think of fair as meaning  
5 proportionate. And I think that there are  
6 rational systems that we can develop based on the  
7 existing process where we can come up with  
8 formulas based on indicators that we can all agree  
9 on. And I would love to see the direction take  
10 that turn and start to develop a much more dynamic  
11 model along those lines because I think that we  
12 can start to rebalance the historic injustices  
13 that have been suffered by our communities.

14 CHAIRPERSON LANDER: Thank you very  
15 much to this panel. We'll let Eddie's nice  
16 softball toss to Eric Goldstein bring him onto the  
17 next panel. So the next panel is Eric Goldstein  
18 from NRDC; Genevieve Gazon from New York Lawyers  
19 in the Public Interest; Martha Laureano from El  
20 Puente; and Murad Awawdeh, hopefully that's close  
21 from Uprose.

22 [Pause, witnesses getting settled]

23 CHAIRPERSON LANDER: You can go  
24 ahead and start when you're ready and...

25 MR. ERIC GOLDSTEIN: Good afternoon

1  
2 Mr. Chairman. Thank you for your leadership in  
3 convening this important hearing. My name is Eric  
4 Goldstein, New York City Environment Director at  
5 the Natural Resources Defense Council. It's an  
6 honor to testify in the wake of Fritz Schwartz,  
7 the former Charter Revision Chair, the former  
8 Chair of NRDC, and his record of public service, I  
9 think, is a model for any lawyer in private  
10 proactive to try to emulate in this City.

11           The 1989 Fair Share Charter  
12 provision was drafted with the best of intentions.  
13 It has had a beneficial impact in terms of  
14 elevating the topic in public discussion and in  
15 some individual project reviews but the hopes and  
16 desires of those of us who strongly supported this  
17 Charter reform proposal have not been fulfilled.

18           We agree with Fritz Schwartz that  
19 the Charter is the foundation not the building.  
20 But why haven't the idealistic aspirations that we  
21 all shared, been realized in implementing this  
22 simple and critical provision. One reason may be  
23 that we simply had unrealistic expectations that a  
24 process requirement could yield substantive  
25 changes. That a process requirement would have

1

2 the force of law and would be aggressively and  
3 comprehensively applied to all projects across the  
4 board.

5 A second reason may be the historic  
6 tension between the concept of zoning which often  
7 seeks to locate facilities with similar uses in  
8 one area and the contrast with that with the Fair  
9 Share principle.

10 But a third reason we believe is  
11 the continuing responsiveness of government to  
12 certain political constituencies in New York City,  
13 particular those living in poor neighborhoods and  
14 communities of color, people who have simply  
15 gotten less political clout and less influence on  
16 these land use decisions. And a good example of  
17 where the Fair Share provision has not achieved  
18 its desired results, as you've heard, is the  
19 environmentally undesirable solid waste  
20 facilities.

21 As you know in the Bronx and  
22 Brooklyn, back when the Fair Share provision was  
23 adopted, these communities were facing growing  
24 problems from commercial waste transfer stations.  
25 The facilities were becoming major environmental

1  
2 nuisances with large volumes of diesel trucks  
3 rumbling in and out of these neighborhoods all  
4 hours of the day and night. They became terrible  
5 neighbors and seemed immune from enforcement  
6 action.

7           Today the City continues to rely on  
8 59 privately operated transfer stations which are  
9 located in these same neighborhoods that they were  
10 2 years ago. The Charter Revision's Fair Use  
11 provision has been unable to get at them. To make  
12 matters worse, efforts to complete the modern  
13 marine transfer stations that were called for in  
14 the 2006 Solid Waste Management Plan have been  
15 moving forward with only limited success.

16           While facilities on Staten Island's  
17 north shore and Hamilton Avenue in Brooklyn are  
18 moving forward, the Preliminary Budget as you know  
19 would postpone plans for completion of four  
20 critical facilities: Southwest Brooklyn, East 91<sup>st</sup>  
21 Street, Gann's Ford here in the West Village, and  
22 West 59<sup>th</sup> Street, pushing those facilities back to  
23 2016--from near present times to 2016 versus 2019.  
24 And as Councilwoman Reyna said at the press  
25 conference earlier today, to push things to those



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2 out years equals never.

3           And as if this weren't enough, when  
4 we hear reports that the forthcoming version of  
5 PlaNYC 2.0 could pave the way for a new generation  
6 of incinerators or similar thermal waste handling  
7 facilities, we get worried because we know it's  
8 the overburdened communities of color in New York  
9 who have every reason to expect that these  
10 facilities will be sited in their neighborhoods.  
11 And regardless of what you call them, these  
12 incinerators are not ready for prime time. They  
13 take the place of environmentally superior  
14 recycling. They are expensive. They are  
15 untested. And they're a problem.

16           We hope that as a result of this  
17 hearing and the discussions to follow, we can work  
18 cooperatively on legislative proposals that can  
19 enhance and strength the implementation of the  
20 Share Concept in City land use decision-making.  
21 We're encouraged by the discussion earlier about  
22 legislative solutions.

23           Specifically with regard to solid  
24 waste facilities we urge the Council to continue  
25 to push for the restoration of funding for the

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2 marine transfer stations, to press for the  
3 restoration of monies to strengthen recycling  
4 public education, rather than funding new  
5 incineration projects which no matter what they're  
6 called do not belong in a 21<sup>st</sup> Century Solid Waste  
7 Management Plan and which we fear would be sited  
8 disproportionately in the communities already  
9 overburdened with undesirable waste facilities.

10 We can't thank you enough for  
11 starting the ball rolling on this issue. We look  
12 forward to working with you in the months to come.

13 CHAIRPERSON LANDER: Thanks.

14 MS. GENEVIEVE GAZON: Thanks very  
15 much. Thank you very much. Good afternoon  
16 Chairperson Lander and members of the Committee.  
17 Thank you for the opportunity to provide testimony  
18 today. My name is Gigi Gazon and I'm the  
19 Community Organizer for the Environmental Justice  
20 Program at New York Lawyers for the Public  
21 Interest. NYLPI, as it's commonly referred to, is  
22 a nonprofit civil rights law firm whose  
23 environmental justice program works with  
24 communities of color and low come communities  
25 throughout New York City on environmental and land

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2 use matters.

3 My testimony today will focus on  
4 the City's landmark 2006 Solid Waste Management  
5 Plan and the Mayor's proposed Fiscal Year 2012  
6 budget which would have serious implications for  
7 the plan. While the Charter's Fair Share  
8 provisions didn't compel the adoption of the SWMP,  
9 as the Solid Waste Management Plan is referred to,  
10 the SWMP provides the City's greatest example to  
11 date of what a meaningful Fair Share approach to  
12 municipal infrastructure would look like.

13 When implemented the plan will move  
14 us from a system in which waste is handled in New  
15 York City is trucked to and from three low income  
16 communities of color to a system in which  
17 infrastructure is equitably located throughout all  
18 five Boroughs and environmental impacts are  
19 heavily reduced by moving waste by barge and rail  
20 rather than truck.

21 And the key element of the plan is  
22 Borough equity. And under it, among other things,  
23 Manhattan will go from handling no waste at all to  
24 handling its fair share of the waste that all New  
25 Yorkers create. As a cost-cutting measure the

1  
2 proposed Department of Sanitation budget would gut  
3 the plan as you've already heard by eliminating  
4 the funding for the construction of several key  
5 SWMP facilities: Manhattan's East 91<sup>st</sup> Street  
6 Marine Transfer Station; Manhattan's West 59<sup>th</sup>  
7 Street Marine Transfer Station; Manhattan's  
8 Gansevoort Marine Transfer Station for  
9 Recyclables; and the Southwest Brooklyn MTS.

10           Eliminating these four marine  
11 transfer stations would eliminate about 40% of the  
12 SWMP's new cleaner capacity for handling waste and  
13 continue our heavy reliance on truck-dependent  
14 facilities in overburdened communities. The  
15 budget would remove Borough equity from the plan  
16 by getting rid of every new piece of  
17 infrastructure located in Manhattan. Specific  
18 negative impacts of the proposed budget include  
19 the following.

20           Sunset Park, Brooklyn which has  
21 significant existing environmental burdens and  
22 agreed under the plan to host an MTS that handles  
23 3,500 tons of waste per day and a large recycling  
24 facility will continue to receive residential  
25 garbage that would otherwise go to Southwest

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2 Brooklyn MTS. The South Bronx and Williamsburg  
3 Greenpoint, two communities that handle a great  
4 majority of waste in the City will continue to  
5 receive commercial waste that would otherwise go  
6 to the East 91<sup>st</sup> Street, West 59<sup>th</sup> Street and  
7 Southwest Brooklyn MTSSs.

8 In addition the South Bronx will  
9 get recyclables that would otherwise go to the  
10 Gansevoort MTS. All New Yorkers and in particular  
11 those that live on truck routes to and from these  
12 communities will lose the substantial air quality  
13 and quality of life benefits that would result  
14 from eliminating 6 million miles of truck traffic  
15 in this City each year through the full  
16 implementation of the plan.

17 And while the budget is still under  
18 negotiation, if these cuts remain, low income  
19 communities and communities of color will continue  
20 to shoulder an unfair amount of the City's waste-  
21 related burdens and our greatest Fair Share  
22 achievement to date will be undermined. And I'm  
23 just about wrapping up.

24 And the fact that this can happen  
25 without running afoul of the Charter's Fair Share

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2 provisions illustrates their very limited  
3 effectiveness. And while we applaud your  
4 examination of Fair Share under the Charter, we  
5 also ask the members of this Subcommittee to  
6 insist on full restoration of the capital funds  
7 for the City's Marine Transfer Stations in the  
8 budget. And thank you again for the opportunity  
9 to provide this testimony.

10 MR. MURAD AWAWDEH: Good afternoon.  
11 Thank you for holding this hearing. And thank you  
12 all, Council folks for being here today. My name  
13 is Murad Awawdeh; I'm the Environmental Justice  
14 Organizer at Uprose. I was born and raised in  
15 Sunset Park, Brooklyn. I've been organizing for  
16 Sunset Park--well for environmental justice in  
17 Sunset Park, Brooklyn since I was ten years old.

18 Uprose is a member of the New York  
19 City Environmental Justice Alliance. Uprose is  
20 dedicated to the development of Southwest Brooklyn  
21 and the empowerment of its residents, primarily  
22 through broad and converging environmental,  
23 sustainable development and youth justice  
24 campaigns. Founded in 1966, Uprose is Brooklyn's  
25 oldest Latino-based organization. We aim to

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2 ensure enlightened community awareness and  
3 involvement, develop participatory community  
4 planning practices and promote sustainable  
5 development with justice and government  
6 accountability.

7 I'm here today to discuss the past  
8 20 years of disparate sitings of environmental  
9 burdens and what that has done to our community of  
10 Sunset Park. Sunset Park is a low income  
11 community of color with approximately 125,000  
12 residents. It's home to the Gowanus Expressway  
13 which has a quarter of a million cars and 15,000  
14 to 25,000 truck passing daily, several power  
15 plants, a waste transfer station, a Federal  
16 prison, brown fields, a bus depot, a recycling  
17 plant and a lack of open space. The Sunset Park  
18 community is also the largest significant maritime  
19 industrial area in New York City. The health  
20 impacts are immense, from asthma, upper  
21 respiratory diseases and cancer to name a few.

22 Sunset Park has felt the brunt of  
23 injustice for decades and has been overburdened  
24 with more than its fair share. When the community  
25 fought and defeated the siting of a 520 megawatt

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2 power plant on its waterfront, the New York Power  
3 Authority built 2 generators on the waterfront.  
4 When Sims Recycling applied to house its facility  
5 in Sunset Park, the community--the City chose to  
6 not regular or permit the future recycling plant.  
7 The community fought long and hard to create a new  
8 waterfront park but it has been delayed and  
9 sidelined. \$2 million from the Bush Terminal  
10 Pier's Park construction has been moved to the  
11 brown field cleanup. That money has not been  
12 replaced. EDC has now removed the environmental  
13 center and children's playground from the plan.  
14 There is also currently no money for phase two of  
15 the park for Pier 5 which is an active pier.

16 Of course this is at the same time  
17 when additional funds are being found for Brooklyn  
18 Bridge Park, Highland Park and 700 other  
19 waterfront projects kicked off through Vision  
20 2020. Sunset Park's designation as a Significant  
21 Maritime Industrial Area is another way our  
22 community has had to deal with the clustering of  
23 burdensome infrastructure. Development  
24 applications in SMIA's are treated differently and  
25 to a lesser review standard than other waterfront



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2 areas, I'm almost done, thereby easing the siting  
3 and clustering of polluting infrastructure.

4           There is a 90% possibility that  
5 Sunset Park will have a storm surge in the next 10  
6 years. And we have had 2 tornados in the past 3  
7 years. Our greatest concern is that given the  
8 concentration of industrial materials and uses in  
9 SMIA's, any significant storm surge may lead to  
10 human exposure to hazardous materials and  
11 contamination of water with dangerous chemicals,  
12 heavy metals and other hazardous substances.  
13 Toxic water would migrate to other parts of the  
14 waterfront as well as upland. As flood waters  
15 recede brown fields would emerge in their wake.

16           Now we are facing the potential  
17 gutting of the Solid Waste Management Plan,  
18 Sanitation's Preliminary Budget would effectively  
19 eliminate funding for the MTSSs, including all  
20 three MTSSs to be sited in Manhattan. If  
21 implemented this would cut Borough equity out of  
22 the SWMP, dramatically reducing its environmental  
23 benefits and betray commitments made by the City  
24 and the Council--and to the many stakeholders that  
25 worked with the City to pass the plan.

2                   Despite Sunset Park being an  
3 environmental justice community, in the interest  
4 of justice, Sunset Park agreed to the retrofit of  
5 the MTS in the community. And it would have been  
6 active only after the other MTSS were brought on  
7 line. In our humble opinion, promises are being  
8 broken to serve the needs of the most privileged  
9 communities in New York City. Again our  
10 communities are stuck with the garbage, the  
11 pollution and the health problems. Thank you.

12                   MS. MARTHA LAUREANO: Good  
13 afternoon. Good afternoon Chairman Sanders and  
14 esteemed Council Members, Lander, [Speaking  
15 Spanish: tu tambien, hombre].

16                   CHAIRPERSON LANDER: He hasn't been  
17 in the room a while.

18                   MS. LAUREANO: Yeah. But I just  
19 want to thank you for holding this hearing. I am  
20 Martha Laureano. I am the Director for Community  
21 Health and Environment for El Puente, El Puente of  
22 Williamsburg that is a youth and adult leadership  
23 organization. And I want to just start by telling  
24 you that as I was doing some research to come and  
25 testify today, the things that I read were just so

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2       amazing to me that if we weren't living it every  
3       day, surely we would think that we were reading  
4       some kind of a science fiction novel.

5                 So I just want to briefly take one  
6       or two minutes to just read some of these things  
7       to you because talk about Fair Share, I mean this  
8       is just unbelievable. That there are 22 toxic  
9       release inventories, EPA-registered in Greenpoint  
10      and Williamsburg and 211 right-to-know facilities.  
11      That these 2 types of facilities are registered  
12      because they either use, store or emit enough  
13      chemicals annually to require them to register  
14      with the City, State and Federal government.

15                 So now one of them is Radiac. And  
16      we've all heard about Radiac today. It's the  
17      City's only nuclear and hazardous chemical waste  
18      storage facility, housed in adjoining buildings  
19      and posing a great danger to the community in the  
20      event of a fire or a spill. So a couple of the  
21      nails in the coffin are that recently the fire  
22      house that would have responded to any fire in the  
23      area has been closed. And additionally as we've  
24      already heard, Governor Paterson recently vetoed  
25      the bill that would prevent this location of the

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2 radioactive waste company to be within 1,500 feet  
3 of a school. So now we have this facility within  
4 1,500 feet of PS 83 where our kids go to school.

5 So we also have the New Town Creek  
6 Sewage Treatment Plant. We also have 17 million  
7 gallons of oil that are in Greenpoint's aquifers  
8 due to that Mobile oil spill a few years ago.  
9 We've already heard about the transfer stations  
10 and the related truck traffic.

11 But some of the things that really  
12 just blew my mind are that this district has high  
13 lead poisoning rates from two lead paint spills  
14 which happened during the Williamsburg Bridge lead  
15 paint removal and from the Brooklyn Navy Yard's  
16 ships sandblasting which has resulted in a high  
17 level of lead poisoning rates in the Latino  
18 community.

19 The asthma rates we've heard about.  
20 And also the waste remediation sites of PCBs that  
21 are in the Brooklyn Navy Yard, again, the  
22 sandblasting which lead to the lead and epoxy  
23 resins that are going into the air.

24 We must make sure that promises  
25 that were made are not broken but we also need to

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2 make sure that our community--I mean we have  
3 reports and statistics about crime and about  
4 education rates and if there are parks in our  
5 neighborhoods but what we don't have, what we  
6 don't have is a system where the citizens who have  
7 a right to know about what is impacting their  
8 lives, which is the environment and the  
9 cleanliness of the environment, we need that  
10 system in place. The City Council can do  
11 something about that. And I hope that we can move  
12 forward with this. Thank you.

13 CHAIRPERSON LANDER: Thank you very  
14 much. Mr. Awawdeh, you said two things I just  
15 want to follow up on a little bit. One that I  
16 thought was good, this is sort of the first time  
17 it came out, but I think it's just getting in the  
18 record, you know, that as part of the Solid Waste  
19 Management Plan and a Fair Share process your  
20 community, even though overburdened, was willing  
21 to do more than its fair share.

22 I think one thing we suffer from  
23 here is a political belief that, you know, on the  
24 part of the Administration and perhaps this is all  
25 administrations that we just shouldn't talk about

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2 it. No one wants this stuff. No one's ever going  
3 to step up to their fair share and so everyone's  
4 just going to whine and complain. And I think  
5 what you said, you know, it really kind of puts  
6 the lie to that. If you have a process that  
7 people feel is transparent and fair, I believe,  
8 not maybe in every case but in a lot of cases,  
9 that citizens will step up and take a fair share  
10 of responsibility. And so, you know, I think it  
11 helps that you put that on the record. I wanted  
12 to thank you.

13 MS. LAUREANO: I would just like to  
14 comment on that. I mean this is not a docile  
15 community. I mean El Puente in particular as well  
16 as Uprose and others of us here, we have a long  
17 history. El Puente, a 28-year history of fighting  
18 around social justice issues, in particular  
19 environmental racism. So it's not that it's a  
20 docile community. And certainly we have had our  
21 share of successes. But again it takes all of us  
22 together to make that happen.

23 CHAIRPERSON LANDER: So then one  
24 follow-up questions and this may be something we  
25 would look at in a Parks hearing but you talked

2 about the disparity between the Sunset Park park  
3 and the Brooklyn Bridge Park and one of the things  
4 that people are doing now increasingly is looking  
5 for these self-financing parks.

6 And I confess I'm of, you know, two  
7 different mindsets. You know, they're asking for  
8 the Brooklyn Bridge Park to be self-financing.  
9 And I think there's an argument that on the one  
10 hand that means we could use scare capital and  
11 operating resources in the places where that's not  
12 possible and say, all right, you know, Brooklyn  
13 Bridge Park, let's let it--you know, and then we  
14 can get to Sunset Park.

15 On the other hand, you know ,it  
16 seems to me once we start going down the path of  
17 making communities, you know, have to pay for  
18 their parks, we'll never do them in the  
19 neighborhoods that you can't induce development  
20 with new facilities. And so I don't know whether  
21 in the process of fighting for the achievement of  
22 the community's vision on the Sunset Park  
23 Waterfront you've given any thought to that? And  
24 kind of how we should push forward. This is on  
25 the good side of Fair Share and not on the bad

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2 side of Fair Share.

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MR. AWAWDEH: Well looking at who  
4 manages--

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MR. ECONOMOU: [Interposing] You -  
6 - .

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MR. AWAWDEH: Looking at who  
8 manages the waterfront and the majority of the  
9 waterfront in Sunset Park is managed by EDC. And  
10 the funding was there. It's just that despite the  
11 long period of time that it's taken them to  
12 actually get the ball rolling on the park, has  
13 dried up the money and at reallocating the \$2  
14 million for the brown field cleanup.

15

This park has been in the planning  
16 phase, master plan phase, remediation and now  
17 building phase for quite some time. It's been  
18 about 10 years. So, you know, looking back if  
19 everything's done in--well not only streamlining  
20 environmental burdens 'cause that's what's been  
21 happening and this is why Fair Share is so  
22 important so that it can stop that but start  
23 streamlining amenities into communities that are  
24 getting hit the hardest such as Sunset Park,  
25 Williamsburg, South Bronx and other communities



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2 that are EJ communities.

3 CHAIRPERSON LANDER: And that's  
4 something that Fritz Schwartz said as well that,  
5 you know, maybe there's some appropriate framework  
6 and also for making that a bit more formal so it's  
7 not an informal what you're taking the burdens,  
8 we'll put the benefits in and we promise and maybe  
9 we'll get to them some time but there's a more  
10 formal way of tying those things together so the  
11 benefit--you know, you can't get the burdens now  
12 and the benefits, you know--

13 MR. AWAWDEH: [Interposing]  
14 Whenever, uh-huh.

15 CHAIRPERSON LANDER: --in that  
16 case. Yeah. Other questions for this? Yes, no a  
17 big thank you to all of you for all your work. I  
18 guess though I just want to end because this was  
19 suggested by Mr. Bautista for Mr. Goldstein. I  
20 guess this idea, it's very appealing that a fairer  
21 sharing forces all of us to attend to how to  
22 reduce the harms altogether.

23 And I just wonder if you can  
24 comment on whether you've seen instances where a  
25 fairer and more transparent reckoning with the

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2 environmental challenges has led to efforts to,  
3 you know, whether that's increased recycling or  
4 develop new technologies or even, I suppose,  
5 simply make the facilities more palatable when  
6 they have to be sited.

7 MR. AWAWDEH: Yeah.

8 MR. GOLDSTEIN: Well we think the  
9 concept of Fair Share has been useful in public  
10 policy discussions. It's been a helpful debating  
11 point and talking point. It has shifted some of  
12 the discussions. It was a valuable concept in  
13 shaping the Borough equity portion of the Solid  
14 Waste Management Plan in 2006. And we gave the  
15 Mayor credit for incorporating those commitments  
16 in the plan. But as the United States Supreme  
17 Court former Justice Brennan said ultimately  
18 enforcement of the law is what really counts. And  
19 we need to strengthen the tool so that the vision  
20 will be realized.

21 CHAIRPERSON LANDER: Great. Thank  
22 you very much. Thanks to all of you on the panel.  
23 All right. For our next panel we have Elena Conte  
24 from the Pratt Center for Community Development;  
25 Kimberly Ng from the Municipal Arts Society of New

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2 York; is David still here? David Sheffler is  
3 still here? [Off mic comment] Okay, great we'll  
4 take it. And Betamia Coronel from OUTRAGE.

5 [Pause, witnesses getting settled]

6 CHAIRPERSON LANDER: Yeah, no,  
7 yeah, we'll just take the... yes. We'll just take  
8 his testimony. We don't have--you know, we'll  
9 just take it and enter it into the record.

10 MS. ELENA CONTE: Should I go?

11 CHAIRPERSON LANDER: Yes, please.

12 MS. CONTE: Okay. Hi. Good  
13 afternoon. My name is Elena Conte and I'm  
14 representing the Pratt Center for Community  
15 Development. Thanks so much for the opportunity  
16 to visit--

17 SERGEANT AT ARMS: [Interposing]  
18 Quiet please.

19 MS. CONTE: --important topic  
20 today. We're submitting more complete testimony  
21 but I'll try to tease you a little bit here and  
22 give you an excerpt.

23 Fair Share is in tremendous need of  
24 improvement. Our testimony focuses on, first, the  
25 current consequences of an insufficient Fair Share

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2 and holistic planning approach, the ways to update  
3 both the criteria and the Fair Share guide for  
4 City agencies to reflect current standards, ways  
5 to ensure that the City's decision-making process  
6 can benefit from both new technology and existing  
7 data beyond Fair Share and including Fair Share.  
8 And finally the need to connect Fair Share  
9 decisions to a more comprehensive approach to  
10 planning in the City in general.

11 But first off I'd like to strongly  
12 urge the Council to use all of the leverage  
13 available to it to persuade the Mayor to restore  
14 funding to retrofit the marine transfer stations  
15 in this year's Capital Budget. Delaying funding  
16 for the marine transfer stations blatantly  
17 contravenes the framework for balance and equity  
18 that was passed by this both in 2006. And the  
19 proposal that the Mayor has put out to remove this  
20 funding demonstrates just how easy it is for hard-  
21 fought, collaborative plans for equity to be  
22 thwarted. And it highlights the underlying issues  
23 that make Fair Share reform so desperately needed.

24 New York City's Fair Share criteria  
25 and procedures are out of date and out of touch.

2 Ever since they went into effect we've been kind  
3 of reverse engineering to get them to address  
4 environmental impacts without the adequate tools  
5 to do so. We outline in the testimony some  
6 specific ways that those criteria could be  
7 updated.

8 But essentially the changes and  
9 anything that, you know, a thorough investigation  
10 could come up with could be incorporated without a  
11 Charter change were the Mayor to charge the  
12 appropriate, willing, and progressive agency with  
13 promulgating updated rules. But the underlying  
14 issue of incorporating public health  
15 considerations into a variety of decisions  
16 including a community's ability to plan and  
17 advocate for itself extends beyond Fair Share  
18 alone and could be advanced directly by the  
19 Council through legislative action.

20 So we're now able to examine not  
21 only the distribution of facilities but also the  
22 geographic concentration of public health impacts  
23 and to juxtapose that with extensive demographic  
24 data on other types of social vulnerabilities,  
25 right. So not just looking at the map but looking

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2 at the people who live on the map near the  
3 facilities.

4 Data can help distinguish between  
5 real environmental justice claims from NIMBY-ism.  
6 And fair playing decisions help facilitate growth  
7 in a sustainable way. New York has a lot to learn  
8 from ways that other cities are integrating health  
9 information into their decision-making. The  
10 Healthy Development Measurement Tool in effect  
11 since 2007 establishes a set of metrics to  
12 evaluate the extent to which land use plans,  
13 projects or policies will impact human health in  
14 San Francisco, for example.

15 The indicators used in San  
16 Francisco are available in New York City. But  
17 here we don't facilitate or require that the  
18 insights available from data are meaningfully  
19 taken into account to guide our choices. Health  
20 impact assessment are increasingly being performed  
21 in the United States with close to 100 having been  
22 performed to date.

23 6 states have passed or introduced  
24 legislation requiring or supporting them. And  
25 their application extends beyond siting decisions.

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2 For example in LA a health impact assessment was  
3 performed to asses the impacts of a proposed  
4 living wage ordinance, something that we know is  
5 of great interest to the Council. So they have  
6 broader application.

7           Recently New York City has made  
8 important strides moving in this direction.  
9 Improvements the Council could act on include  
10 facilitating and where necessary mandating the  
11 disclosure of all available data into actually a  
12 very interesting tool that the City has developed  
13 with funding support from the CDC, the  
14 Environmental Public Health and Sustainability  
15 Tracking Portal. This is, I think, the beginning  
16 of this one place that we've been talking about  
17 where all this stuff could be compiled.

18           The mandate and the function of the  
19 portal could be expanded to include tools that  
20 allow for the data housed there to actually be  
21 applied by agencies in the public to siting and  
22 development decisions and not just siloed in the  
23 health category. And a warning system for  
24 environmental burdens could be developed based on  
25 measurable indicators traced over time. There's

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2 some pioneering work being done with something  
3 called the Cumulative Impact Screening Method in  
4 California that I would urge you to check out.

5 Finally connecting Fair Share to a  
6 comprehensive City planning framework would  
7 provide both an overarching vision of the City and  
8 early indication of growth areas and sectors and  
9 the demands for increased infrastructure that come  
10 with them.

11 Without a comprehensive planning  
12 framework, fair and equitable distribution of  
13 development, preservation and noxious uses is  
14 never going to be a priority in managing growth.  
15 Ensuring that the environmental burdens of growth  
16 are equitably shared gives all New Yorkers a stake  
17 a reducing those burdens. We look forward to  
18 working with the Council on accomplishing these  
19 goals. Thank you.

20 MS. KIMBERLY ONG: Good afternoon.  
21 I'm Kimberly Ong and I'm the Municipal Art  
22 Society's Menapace Fellow for Urban Land Use Law.  
23 And I'm speaking on behalf of the Municipal Art  
24 Society of New York. MAS is a private nonprofit  
25 membership organization that fights for



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2 intelligent urban planning, design, and  
3 preservation through education, dialog and  
4 advocacy.

5           There have been a lot of useful  
6 testimony that's already been heard so I'm going  
7 to try to make this brief. This past July MAS  
8 cosponsored a conference with Manhattan Community  
9 Board 1 entitled "Land Use and Local Voices: Is  
10 the City's Land Use Process in Need of Reform".  
11 The all-day conference attended by many of those  
12 in attendance today and a number of City  
13 representatives explored ways to plan for New York  
14 City's future and to foster conversations among  
15 City agencies, residents, Community Boards and  
16 developers and land use decisions.

17           Several speakers including also a  
18 number of people here today observed that there  
19 are significant issues with the Fair Share  
20 provision of the City Charter. And as part of  
21 MAS's ongoing work we host an all day training  
22 every year, the Livable Neighborhoods Program, to  
23 educate community activists and have also recently  
24 in partnership with the Bronx Borough President's  
25 Office led land use trainings for new Community

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2 Board members.

3 Consistently we have heard the  
4 message that Fair Share is difficult to understand  
5 and hard to navigate. In response to these  
6 concerns MAS is working on a simple and  
7 straightforward guide to navigating the Fair Share  
8 process so New Yorkers can understand the process  
9 of siting these facilities and where there are  
10 opportunities to influence this process.

11 Our first step is a careful  
12 accounting of what exists today. Although the  
13 2010 Charter Revision Commission declined to take  
14 up many of the critical issues at the heart of the  
15 Fair Share process, we recognize that there is a  
16 lot of work to be done. And MAS would like to  
17 thank Council Member Brad Lander and the rest of  
18 this City Council's Subcommittee on Landmarks,  
19 Pubic Siting and Maritime Uses for initiating this  
20 discussion on Fair Share.

21 MS. BETAMIA CORONEL: good  
22 afternoon.

23 CHAIRPERSON LANDER: Try pushing  
24 the button again, yeah.

25 MS. CORONEL: Okay. Now? Good

1  
2 afternoon. My name is Betamia Coronel. I'm the  
3 Organizer for Outreach and I'm here to read the  
4 testimony on behalf of Ray Kairys, he's the  
5 Chairperson of the Organizations United for Trash  
6 Reduction and Garbage Equity, the acronym OUTRAGE.

7 We are a North Brooklyn coalition  
8 of over two dozen civic and community groups that  
9 fight for the fair distribution of garbage  
10 transfer stations in the City of New York and the  
11 reduction of truck traffic in our community. We  
12 are also members of the Citywide Coalition OWN,  
13 the Organization of Waterfront Neighborhoods and  
14 have been a part of the United Effort to Create an  
15 Equitable Plan for Processing Garbage in New York  
16 City for well over a decade now.

17 The communities of Greenpoint and  
18 Williamsburg in Brooklyn have the burden of  
19 processing over 44% of the City's total garbage.  
20 In 2006 we joined other City community groups in  
21 Mayor Bloomberg's efforts for the adoption of the  
22 Solid Waste Management Plan. And we believe this  
23 plan called for environmental responsibility and  
24 equity in processing the garbage throughout the  
25 five Boroughs.

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2                   However, five years later we are  
3 still waiting for the implementation of this plan.  
4 In a soon to be released report, a report that  
5 community members came together to hold, found  
6 that despite the opening of the rail-based  
7 alternative transfer station at Varick Avenue, our  
8 community is still overwhelmed with the number of  
9 transfer stations and the number of trucks going  
10 back and forth through our streets. Our study  
11 found that on any given day over 200 trucks pass  
12 through our main streets during any given 2-hour  
13 period. We also found a clear link between the  
14 extremely high number of air particles at the  
15 sidewalk level when trucks pass through these  
16 streets, especially near playgrounds and homes.

17                   We desperately need the opening of  
18 other marine transfer stations in the City which  
19 would fulfill on the Fair Share Charter.

20                   The proposed administration budget  
21 would eliminate the funding for the opening of the  
22 marine transfer stations at East 91<sup>st</sup> Street, West  
23 59<sup>th</sup> Street, Gansevoort and Southwest Brooklyn.  
24 These cuts don't just delay the implementation of  
25 the SWMP but essentially kill the whole concept of

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2 Fair Share. This proposed budget will break the  
3 City's promises on many levels to relieve  
4 communities like ours which hold the daily burden  
5 of heavy truck traffic and the promise to treat  
6 every Borough fairly.

7 We thank you for the opportunity to  
8 testify. And we ask to reject this budget  
9 proposal and by rejecting this proposal you are  
10 also contributing to the fairness throughout all  
11 Boroughs.

12 CHAIRPERSON LANDER: Thanks very  
13 much. I think folks were here earlier when I said  
14 this but I will say it again just for folks that  
15 weren't. I'm pleased to report that the Council's  
16 official response to the Mayor's Preliminary  
17 Budget does, for the first time that I can  
18 remember, contain a response on the Capital Budget  
19 as well. And the council is on record; the  
20 Speaker is on record specifically opposing that  
21 cut and asking that the money get put back in for  
22 the MTSS. Do you want to say thank you again?

23 [Off mic comment]

24 CHAIRPERSON LANDER: All right.  
25 I'm going to say thank you to you guys for still

2 being here. This is good. Good Council Member  
3 turnout for a long hearing. Thank you. It's  
4 great especially in the Pratt testimony. No  
5 secret that's a soft spot in my heart for the  
6 Pratt Center, to have some real concrete things.

7 I think that we can then pick up  
8 and really look and try to figure out where the  
9 pieces of legislation should be and follow up with  
10 everybody in the room and try to drill down to the  
11 next steps that we're talking about so. Thanks  
12 very much.

13 With gratitude for the patience of  
14 our final two panelists, if they're still here, we  
15 have Sara Martin from the Morningside Heights West  
16 Harlem Sanitation Coalition and Jillian Sesenton  
17 from the Point. Thank you very much for coming  
18 and for sticking around. My apologies that you  
19 wound up at the end of the day. No, nothing, no  
20 disrespect intended, just a great list of  
21 panelists throughout. So thank you very much for  
22 being here. We look forward to your testimony.

23 MS. SARAH MARTIN: Should I go now?  
24 Well good afternoon all. My name is Sarah Martin.  
25 And I'm Co-Chair of the Morningside Heights West

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2 Harlem Sanitation Coalition. Fair Share is the  
3 law. No one community should be burdened with  
4 more than its fair share of polluting facilities.

5 Yet the Sanitation Department has  
6 recently proposed to postpone the hard-fought  
7 Solid Waste Management Plan, a plan which assures  
8 that all communities take care of their fair share  
9 of garbage. The Mayor promised that this plan  
10 would be put into effect. The City Council voted  
11 in favor of it. Therefore this Disney [phonetic]  
12 proposal is unacceptable.

13 At the present time Manhattan does  
14 not take care of its fair share of garbage. Yet  
15 the cutbacks will postpone retrofitting all of the  
16 planned marine transfer stations in our Borough.  
17 Even though Manhattan is our home, we know we must  
18 do our fair share. Living in West Harlem, we know  
19 what it's like to have an asthma epidemic. By the  
20 way I'm chronic asthmatic, steroid-dependent.

21 Brooklyn, the South Bronx and  
22 possibly Queens have an even worse situation. In  
23 addition to the problems like ours, they have many  
24 unhealthy land-based transfer stations. These  
25 were supposed to be phased out by the solid waste

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2 plan. Now the City is saying some other time.  
3 This is unfair and must be changed. It's just not  
4 right.

5 As to the idea of building waste to  
6 energy plants, these are just incinerators with  
7 fancy names. They still emit toxic substances and  
8 those very small particles that lodge deep into  
9 our lungs, like me, do terrible damage. And where  
10 do you think these plants would be built if  
11 located? Where I live. You can be sure they will  
12 be put in low income communities of color. Forget  
13 it. This goes too far against Fair Share.

14 All the problems I have mentioned  
15 would not have happened if the Fair Share  
16 provision of the Charter had been stronger. This  
17 is why we demand that the City Council strengthen  
18 the Fair Share provisions now. I am steroid-  
19 dependent, I inhale steroids twice a day and it's  
20 a matter of life or breath to me. So it's up to  
21 you guys to change this, to make it human, make it  
22 Fair Share for all of us.

23 And I'd like to make one comment.  
24 I was here first in this room and I was the last  
25 one to be called just about. Thank you.



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CHAIRPERSON LANDER: And I do  
3 apologize for that and I appreciate your waiting  
4 and I appreciate your, as a Manhattan resident,  
5 speaking up on Borough equity as well. Thank you.

6

MS. JILLIAN SESENTON: I don't know  
7 if the mic is on. It's on? Okay.

8

CHAIRPERSON LANDER: I think so.

9

MS. SESENTON: Okay. Good  
10 afternoon. I'm happy that my testimony is--

11

[Off mic comments]

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MS. SESENTON: Closer? Right here?

13

Oh.

14

CHAIRPERSON LANDER: And please  
15 begin by stating your name for the record.

16

17

MS. SESENTON: My name is Jillian  
18 Sesenton and I am representing The Point CDC. And  
19 I'm happy, as I was saying before, that I am one  
20 of the last to testify because my testimony is  
21 extremely important. This statement was written  
22 and is on behalf of all members of our team group  
23 of activists. It's coming to inform our  
24 community's action. ACTION is a youth activist  
25 program housed at the Point Community Development  
Corporation.

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We are a program for high school students who are devoted to the revitalization of Hunts Point. We work three times a week after school to identify social and environmental justice issues facing the Hunts Point section of the South Bronx with the goal of creating and implementing ongoing youth-led solutions.

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Our role as ACTION is to represent the youth's voice in Hunts Point. Most of our members reside in Hunts Point and because we live in Hunts Point we all feel the effects of Hunts Point environmental burdens. We understand that everyone produces waste, needs energy and eats food. Nevertheless the fact that the majority of the City's waste and its production of how food is handled in such a concentrated area is a tremendous injustice. Thousands of trucks come in and out of Hunts Point every day which has perpetuated asthma and danger into the culture of Hunts Point.

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In addition to the smell, it is easy to feel unsafe when crossing the streets. It is understood that in the City Charter Revision Fair Share was discussed and has since been pushed

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2 to the side to make room for other problems being  
3 handed by the City. That in itself is unfair.  
4 From the beginning if it didn't make sense and  
5 wasn't beneficial it wouldn't have been included  
6 in the City Charter. There are plenty of ways to  
7 fix Fair Share and make New York a more  
8 environmentally friendly city.

9 Two of the most simple and logical  
10 ways are with the marine transfer stations and  
11 waste to energy facilities. With MTS the City can  
12 lower its asthma rates because there will be fewer  
13 trucks polluting the air and the waste would be  
14 transported by water instead of land. MTS also  
15 allows the City to honor Fair Share.

16 In the 2006 Solid Waste Management  
17 Plan for MTS the transfer stations were to be  
18 equally distributed throughout the Boroughs and  
19 together they enabled the City with the ability to  
20 collect more waste than it does already. The WTE  
21 facilities could be a very big step in making the  
22 City more environmentally friendly. We agree that  
23 the conversion of waste to energy is the epitome  
24 of recycling. However we do not agree in the  
25 incineration of all waste because burning things

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2 can be detrimental to our atmosphere.

3 Another concern of the Hunts Point  
4 residents is that all of the WTE facilities will  
5 be placed in M-3 zones like Hunts Point, adding on  
6 to the preexisting burdens faced by our community  
7 every day. Fair Share is a necessity to the  
8 sustainability of this City and Hunts Point. We  
9 strongly urge our elected officials to acknowledge  
10 the burdens faced by our community and fix Fair  
11 Share.

12 It would lessen the burden on Hunts  
13 point and our lives. Thank you. And on behalf of  
14 the kids, they're in school right now, but I know  
15 that they would all say you guys are awesome.

16 [Chuckling]

17 CHAIRPERSON LANDER: That was  
18 wonderful. Thank you. Please tell them we really  
19 appreciate the work that they put into this.  
20 Council Member Arroyo.

21 COUNCIL MEMBER ARROYO: Yes. I  
22 just want to remind my colleagues that this body  
23 acted on legislation that impacted or restricted  
24 the sale or banned the sale of flavored tobacco.  
25 And it was ACTION who brought this legislation to

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2 this body. So thank you for that.

3 MS. SESENTON: Thank you.

4 CHAIRPERSON LANDER: Thank you very  
5 much for your testimony. Let me just, again,  
6 thank everyone who came out and who testified  
7 today. I want to thank our three Council Members  
8 who stayed here throughout out the--all the way to  
9 the end of the hearing and really provided a good  
10 listen, to thank, again, my staff, Michael  
11 Freedman Schnapp and our volunteer, Traci Sanders  
12 who put a ton of work into this, and also to  
13 Christian Hilton, to Gail Benjamin and to Carole  
14 Shine for their support and time.

15 As we've said, this is really a  
16 beginning and not an ending. We've had the  
17 oversight hearing but now we're going to continue  
18 to work with you to see what we can do moving  
19 forward. Thanks very much and with that I  
20 conclude the hearing.

21 [Gavel banging]

C E R T I F I C A T E

I, Laura L. Springate certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script that reads "Laura L. Springate". The signature is written in black ink on a light-colored background.

Signature     Laura L. Springate    

Date     May 27, 2011