

SUPREME COURT OF THE STATE OF NEW YORK  
BRONX COUNTY

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MARK GJONAJ, CLARISA ALAYETO, FELIX  
APONTE, BERNARD SMITH, WILBERT LAWTON,  
MOHAMMED MARDAH, SHEILA SANCHEZ,  
SARA NUNEZ-MEJIA, JEAN HILL, RAFAEL  
BARBOSA, YASMIN CRUZ, GERARDINA COLON,  
JANICE WALCOTT and ROBERT HALL,

Index No.: 28102/2017E

**AMENDED COMPLAINT**

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant,

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Plaintiffs, by their attorney, Lisa B. Lia, Esq., as and for their Amended Complaint  
against the City of New York allege as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs institute this action to redress injuries caused by defendant City of New York’s (the “City”) failure to proportionately distribute City facilities throughout the boroughs. The City’s history of paying lip service to the Fair Share Rules, without (among other things) engaging in a meaningful analysis of the impact of the siting of City facilities, has left the Bronx with more than its “fair share” of those facilities, causing public resources to become overburdened, and business owners and residents like the plaintiffs to suffer measurable damages.

2. Plaintiffs are elected officials, community leaders, business owners, and residents of the Bronx who seek to alleviate the burden on their community, Bronx County, relating to the overwhelmingly disproportionate number of “Residential Facilities” and associated “Residential

Beds”, including homeless shelters and mental health facilities, which are being placed in the County of the Bronx in violation of the New York City Charter’s (“Charter”) “Fair Share” and its attendant rules, including Title 62 of the Rules of the City of New York (“RCNY”).

3. The Borough of the Bronx is comprised of twelve (12) local Community Boards. Plaintiffs reside and/or work in each of those twelve Community Board areas and thus are representative of those similarly affected across the entire Borough of the Bronx.

4. In 1989 the New York City Charter Revision Commission adopted the “Fair Share Rules” of Chapter 8, Sections 203 and 204 of the New York City Charter. These rules required that the City develop “Fair Share” criteria to ensure the fair distribution of facilities in the various communities of the City of New York. The stated purpose of the criteria is to foster neighborhood stability and revitalization by furthering the fair distribution of city facilities among communities.

5. In establishing the location for a facility, the City agencies were required to consider the facility’s compatibility with its surroundings and its potential for negative impact upon the neighborhood, among other things.

6. Section 204 requires that City agencies issue what has become known as a “Fair Share Statement” when it proposes a site for City facilities. These statements are required to describe how the proposed action or site satisfies the Fair Share Criteria and state that it is consistent with the most recent Statement of Need (“SON”), and any written statements from Borough Presidents or Community Boards in response to the SON.

7. In the case of Residential Facilities, which include foster homes, inpatient mental health treatment centers, homeless shelters, transitional housing, etc., the Fair Share Criteria require that agencies apply an even stricter standard for settings within the community with a

high ratio of “Residential Beds” to population, including explaining whether alternative sites were considered and whether there are alternative sites in communities with lower bed-to-population ratios.

8. To guide the application portion of the Fair Share Criteria, the Department of City Planning (“DCP”) was to publish an annual index of the beds-to-population ratio for each community district inclusive of all city, state, federal and private facilities.

9. The City has, for many years, failed to compile or provide the mandated beds-to-population ratios and thus make available one of the fundamental criteria for Fair Share consideration. The City’s failure to provide such information, and its actions in placing significantly more than the “Fair Share” of residential facilities in the Borough of the Bronx, is causing substantial damage to residents and businesses in that borough.

10. A February 2017 Council report entitled *Doing Our Fair Share. Getting Our Fair Share – Reforming NYC’s System for Achieving Fairness in Siting Municipal Facilities* outlines the key issues with how the Fair Share rules have functioned since their inception. A copy of the report is annexed as **Exhibit A**.

11. The purpose of this action is not to close down any “facility” or limit services for homeless, mentally disabled or other afflicted persons, but instead to facilitate the equitable distribution of “City Facilities”, and to compel compliance with the Fair Share policy and procedures required by the City Charter.

12. This Court has jurisdiction to issue declaratory and injunctive relief to compel the City to comply with the “Fair Share” rules to help ensure that the expansion or creation of new facilities does not unfairly burden the borough of the Bronx.

**PARTIES**

13. Plaintiffs Mark Gjonaj, Clarisa Alayeto, Felix Aponte, Bernard Smith, Wilbert Lawton, Mohammed Mardah, Sheila Sanchez, Sara Nunez-Mejia, Jean Hill, Rafael Barbosa, Yasmin Cruz, Gerardina Colon, Janice Walcott and Robert Hall all live and/or work in the Borough of the Bronx. Each is adversely affected by the City's failure to follow the law and the placement of more than its share of facilities in the Borough of the Bronx.

14. The City is a domestic municipal corporation within the State of New York and governed by the Charter and RCNY. The City acts through and is ultimately responsible for the actions of its agencies including but not limited to the Department of Homeless Services ("DHS") and the Department of Health and Mental Hygiene ("DOHMH").

**JURISDICTION AND VENUE**

15. The Court has jurisdiction over the City pursuant to CPLR 301.

16. Venue is proper in the Bronx pursuant to CPLR 504(3) because the actions complained of took place in the Bronx.

17. Plaintiffs have standing because this action concerns administrative acts required by law and does not implicate any agency's discretion or challenge a single final determination by the City or any administrative body and is therefore not subject to the requirements of CPLR Article 78.

18. Plaintiffs are all residents and/or maintain businesses in the Borough of the Bronx and are adversely affected by the City's actions. The interests asserted herein are within the zone of interests to be protected by the Fair Share rules.

### FACTS

19. In 1989, the City Charter was amended to include the Fair Share Rules that now govern the location of “City Facilities.” Charter §§ 203, 204.

20. A City Facility is a “facility used or occupied or to be used or occupied to meet city needs that is located on real property owned or leased by the city or is operated by the city or pursuant to a written agreement on behalf of the city.” Charter § 203(c).

21. The Fair Share Rules require that a “citywide statement of needs concerning facilities” be submitted by the mayor to the city, the council, borough presidents, borough boards and community board. Charter § 204(a).

22. Following the passage of the Fair Share Rules, Appendix A to Title 62 of the RCNY was added and governs the criteria for the location of City Facilities.

23. The Fair Share Criteria are “designed to further the fair distribution among communities of the burdens and benefits associated with city facilities, consistent with community needs for services and efficient and cost-effective delivery of services and with due regard for the social and economic impacts of such facilities upon the areas surrounding the sites.” Charter § 203[a].

24. The guidelines set forth eight considerations the City must undertake in order to fulfill this purpose. The city must seek to: (1) site facilities equitably by balancing the considerations of community needs for services, efficient and cost-effective service delivery, and the social, economic, and environmental impacts of city facilities upon surrounding areas; (2) base its siting and service allocation proposals on the city's long-range policies and strategies, sound planning, zoning, budgetary principles, and local and citywide land use and service delivery plans; (3) expand public participation by creating an open and systematic planning

process; (4) foster consensus building; (5) plan for the fair distribution among communities of facilities providing local or neighborhood services in accordance with relative needs among communities for those services; (6) lessen disparities among communities in the level of responsibility each bears for facilities serving citywide or regional needs; (7) preserve the social fabric of the city's diverse neighborhoods by avoiding undue concentrations of institutional uses in residential areas; and (8) promote government accountability by fully considering all potential negative effects, mitigating them as much as possible, and monitoring neighborhood impacts of facilities once they are built.

25. Article 3(a) of Appendix A to Title 62 of the RCNY defines “Residential Facility” as a City Facility with sleeping accommodations for, among others, the homeless and mentally ill.

26. Strict scrutiny of the relevant RCNY guidelines is required with respect to the construction or enlargement of a Residential Facility.

27. As reflected in the following chart, the Bronx has more residential beds for homeless persons and mentally ill persons per capita than any other borough:

Borough	Population	Total Homeless Beds	Homeless Beds Per 100,000	Total OMH Beds	OMH Beds per 100,000
Bronx	1,455,720	12,094	830.8	5,588	383.9
Brooklyn	2,629,150	12,979	493.7	6,086	231.5
Manhattan	1,643,734	11,926	725.5	4,896	297.9
Queens	2,333,054	9,931	425.7	3,605	154.5
Staten Island	476,015	31	6.5	1,077	226.3
City-wide	8,537,673	46,961	550.0	21,252	248.9

28. Persons that require accommodations in a Residential Facility are more likely than other persons to require and make use of other City services.

29. Accordingly, services to Bronx residents, such as hospital, emergency services, police and fire department are being overburdened. Such overburdening has caused, and will continue to cause, pecuniary harm to plaintiffs, and poses a risk to their health and safety.

**FIRST CAUSE OF ACTION**  
**DECLARATORY JUDGMENT**

30. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if fully set forth herein.

31. The Court has authority to issue a declaratory judgment pursuant to CPLR 3001 in the case of any justiciable controversy.

32. City residents are permitted to challenge application of the Fair Share criteria.

33. The City has failed to conduct proper Fair Share reviews in accordance with the Fair Share Criteria contained in § 203 of the NYC Charter, and Title 62, Appendix A of the Rules of the City of New York, in siting Residential Facilities in the Bronx since 1999.

34. The City has failed to issue an annual “beds-to-population” index in several years; has failed to engage in a meaningful alternative site analyses for Residential Facilities outside of the Bronx; has failed to meaningfully inform the Bronx community of its plans; and has failed to consider the factors set forth in the guidelines, in siting a disproportionate number of Residential Facilities in the Bronx since 1999.

35. Not only does the Bronx have the highest rate of “residential beds” per 1,000 residents, but since 1999 its ratio has significantly increased, while that of other boroughs has dropped – for instance, while the rates of residential beds in the Bronx increased by 14%, the

number of residential beds in Queens decreased by 29% and in Staten Island the ratio decreased by 35%.

36. The Bronx has seen such disproportionate increase in Residential Facilities and Residential Beds from 1999-2015 in violation of the Fair Share Rules, and to the detriment of: plaintiffs; others who live and/or work in the Bronx; and all persons similarly situated in the Bronx.

37. The foregoing increase could not have complied with New York City Charter Fair Share Rules in light of the lack of availability of information required to make an informed Fair Share determination.

38. At the same time, and as a result of the foregoing increases, the Bronx faces severe overcrowding and lack of affordable housing, lack of sufficient access to mass transit, lack of adequate healthcare resources, and a lack of sufficient police resources to investigate crime, to the pecuniary detriment of plaintiffs and other members of the Bronx community.

39. For example, the housing that could be used to meet the community's severe housing needs is instead being used by Residential Facilities, often at a premium, driving up rent prices and making it impossible for Bronx residents to compete for rental units.

40. Accordingly, the Court should declare that the City is in violation of the Fair Share Rules of the Charter and the RCNY and issue an injunction requiring that the City: (i) issue a "beds-to-population" index annually; (ii) refrain from constructing or adding to any existing Residential Facilities in the Bronx absent full compliance with the Fair Share Rules; and (iii) issue any such other and further relief that the Court deems just proper and equitable.



**SECOND CAUSE OF ACTION**  
**PRIVATE ACTION FOR PUBLIC NUISANCE**

41. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if more fully set forth herein.

42. The City has violated the Fair Share Rules by increasing the number of Residential Facilities in the Bronx absent the legally required analysis, and the City has no reasonable basis for doing so.

43. The City's failure to comply has persisted for an unreasonable duration of at least fifteen years.

44. The disproportionate number of Residential Facilities sited in the Bronx interferes with and causes damage to Bronx community residents; interferes with the community's use of public resources; and has subjected and will continue to subject the community, including plaintiffs, to significant hazards and risks to health, safety and property.

45. The City's failure to comply with Fair Share has resulted in and will continue to result in damages to plaintiffs, including special damages, such as diminished property values, diminished business values, and continued and further strain on limited public resources in the Bronx.

46. No prior request has been made for the relief sought herein.

**WHEREFORE**, plaintiffs demand a declaratory judgment as set forth above on the First Cause of Action and injunctive relief and damages on the Second Cause of Action, and such other and further relief as the Court deems just, proper and equitable.

Dated: Bronx, New York  
June 6, 2018

Yours, etc.



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