

A JAILSCRAPER RISES IN NEW YORK CITY'S SKYLINE AND CASTS A SHADOW OVER MANHATTAN'S CHINATOWN: AN EXAMINATION OF ITS APPROVAL PROCESS

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Photo: Mega jail site in October 2023.

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INTRODUCTION



Photo: Street graffiti outside of Columbus Park near the demolition and construction site for the mega jail reads, “STOP CHINATOWN JAIL.” September 2022.

New York City will soon have the distinction of constructing one of the tallest jails—if not the tallest—in the world.¹ The jail will be a new addition to New York City’s skyline at 295 feet tall,² even taller than Chicago’s Metropolitan Correctional Center.³ As part of former Mayor Bill de Blasio’s plan to close Rikers Island as a detention center,⁴ this jail is part of the Borough-Based Jail Program intended to accommodate a smaller jail population in four smaller jails located in the Bronx, Manhattan, Brooklyn, and Queens.⁵ The impetus for closing Rikers came in part from increased concern that pretrial detention has a disproportionately harmful impact on Black and Latinx people.⁶ Former U.S. attorney Preet Bharara’s report on abuses of detainees by Rikers staff put the public on greater notice of the conditions at Rikers.⁷ High-profile deaths, such as Kalief Browder’s death by suicide after his three-year detention for allegedly stealing a backpack⁸ and Layleen Polanco’s death after suffering an epileptic seizure in solitary confinement,⁹ further put a spotlight on Rikers’s culture of abuse against detainees. Under this plan, the massive

¹ Natasha Ishak, *New York City Wants to Build a ‘Mega Jail’ in Chinatown. Residents Are Fighting Back.*, INSIDER (Apr. 21, 2022, 4:58 PM), <https://perma.cc/JDT2-NBGW>.

² Letter from Dean Fuleihan, First Deputy Mayor, N.Y.C. Off. of the Mayor, to Corey Johnson, Speaker, N.Y.C. Council, & Diana Ayala et al., Members, N.Y.C. Council (Oct. 18, 2019), <https://perma.cc/Z5GK-6ZEX> [hereinafter Fuleihan Letter].

³ *Metropolitan Correctional Center: Chicago*, COUNCIL ON TALL BLDGS. & URB. HABITAT, <https://perma.cc/LV3P-TQUT> (last visited Mar. 22, 2023).

⁴ N.Y.C. OFF. OF THE MAYOR, SMALLER, SAFER, FAIRER: A ROADMAP TO CLOSING RIKERS ISLAND 4 (2018), <https://perma.cc/KJZ4-DVPA>.

⁵ *Id.* at 5.

⁶ See INDEP. COMM’N ON N.Y.C. CRIM. JUST. & INCARCERATION REFORM, A MORE JUST NEW YORK CITY 13 (2017), <https://perma.cc/V57G-LJG2> (explaining that “nine out of ten people being held behind bars in New York City are either Black (55%) or Latino (34%)”).

⁷ See OFF. OF THE U.S. ATT’Y, S. DIST. OF N.Y., U.S. DEP’T OF JUST., CRIPA INVESTIGATION OF THE NEW YORK CITY DEPARTMENT OF CORRECTION JAILS ON RIKERS ISLAND 3 (2014), <https://perma.cc/57LQ-D3WD> (finding a “deep-seated culture of violence” at the adolescent facilities at Rikers, where Department of Correction staff “routinely utilize force” and “punitive segregation,” and suggesting that the systemic deficiencies in the report may also apply to the other adult jails at Rikers).

⁸ Caroline Spivack, *Rikers Island Closure and Borough-Based Jail Plan, Explained*, CURBED, <https://perma.cc/LP2Y-SFR5> (Feb. 26, 2020 12:47 PM) (explaining that inmates and correctional staff beat Kalief Browder and that he spent two years in solitary confinement “without ever being tried or convicted of a crime”).

⁹ Mihir Zaveri, *N.Y.C. to Pay \$5.9 Million in Death of Transgender Woman at Rikers*, N.Y. TIMES (Aug. 31, 2020), <https://www.nytimes.com/2020/08/31/nyregion/layleen-polanco-settlement-rikers-transgender.html> (on file with CUNY Law Review) (describing the consequences of Polanco’s death, including the City reaching a \$5.9 million settlement with her family, which was the “largest . . . recorded over an inmate’s death at Rikers Island,” disciplining 17 Rikers Island staff members, and “spurr[ing] [former] Mayor Bill de Blasio to call for an end to solitary confinement”).

“mega jail” or “jailscrapper” will replace the Manhattan Detention Complex in Manhattan’s historic Chinatown.¹⁰

Despite the emphasis on closing Rikers as a matter of racial and criminal justice for Black and Latinx people, the Borough-Based Jail Plan is the result of a flawed land use approval process. Mayor de Blasio’s administration appeared to choose to locate the Manhattan-based jail in a minority neighborhood that would not be able to politically resist the City’s decision to only consider two locations in Chinatown. Mayor de Blasio framed building the Manhattan mega jail in Chinatown as part and parcel of closing Rikers, creating a false dilemma between (1) building the jail to carry out a criminal justice priority for Black and Brown communities, or (2) doing nothing at all to pursue racial justice or criminal justice reform. It appeared easier for de Blasio’s administration to proclaim success implementing “criminal justice reform” for Black and Brown communities than to invest in those communities to help reduce high rates of criminalization.¹¹ The plan harms Asian Americans by disregarding the history and importance of Chinatown for Asian Americans, as well as the local community’s concerns about the mega jail’s significant impacts on the neighborhood and the health of Chinatown’s residents and workers.

Part I of this Article will discuss the origins of Chinatowns and show how they represent a historic and vital part of Asian American survival. Nonetheless, forces such as violence, outsiders’ land use decisions, and gentrification have caused Chinatowns to shrink geographically or disappear in the United States. The spike in anti-Asian harassment and violence over the course of the COVID-19 pandemic¹² has manifested deeply rooted anti-Asian racism and has reinforced Chinatowns’ importance as safe havens for Asians. Part II will examine the similarities between the community opposition to building the Manhattan mega jail today and building the Manhattan Detention Complex towers in the 1980s.

Part III of this Article will explain the rationale and plan for the mega jail. Part IV will explain the typical land use process for major development projects that require rezoning. Mayor de Blasio’s administration pushed through the Borough-Based Jail Program on a timeline that was

¹⁰ *The Jailscrapper vs. Chinatown: NYC Residents Fight Construction of World’s Tallest Jail*, DEMOCRACY NOW! (Dec. 5, 2022), <https://perma.cc/Q9ZL-2VQ5>.

¹¹ See generally Willie Mack, *Prison Land: An Interview with Brett Story*, GOTHAM CTR. FOR N.Y.C. HIST. (June 1, 2021), <https://perma.cc/DP79-45C8> (explaining that minimizing the state’s welfare functions coincided with increased construction of prisons and mass incarceration that has targeted Black and Brown communities in New York City and upholds a racial capitalist economic system).

¹² STOP AAPI HATE, TWO YEARS AND THOUSANDS OF VOICES: WHAT COMMUNITY-GENERATED DATA TELLS US ABOUT ANTI-AAPI HATE 2 (2022), <https://perma.cc/SB4C-ZWDK>.

unprecedented for a development project of such a massive size, largely disregarding the local Chinatown community's opposition. Upon entering office, Mayor Eric Adams has flip-flopped on his campaign stance and allowed the plan for the mega jail to go forward.¹³ In addition to reviewing how the land use approval process unfolded, this Part will also discuss how litigation in New York state courts by local community opponents has failed to prevent the mega jail plan from going forward.

Part V of this Article will focus on the City's unpersuasive justifications for the Manhattan mega jail and show how they defy common sense. Construction for the Borough-Based Jail Program has been estimated to cost between \$1.5 billion from earlier estimates to now \$2.13 billion for the Manhattan mega jail¹⁴ and from \$8.3 billion to now \$10 billion for all the borough-based jails.¹⁵ Construction is estimated to last through 2027.¹⁶ There has been substantial disregard for local community input, the displacement of local businesses, and the environmental and public health impacts of demolishing the Manhattan Detention Complex and constructing a jailscraper. The City's assessment process allows the City significant discretion to disregard the development's potential harms. Through this discretionary process, the City has in effect claimed that there will not be significant impacts on the historic neighborhood or the health of Chinatown's residents and workers; an assertion that seems unlikely for such a gigantic project. This Article analyzes and critiques how the City approved the mega jail step by step using this discretion.

¹³ While local representatives and community leaders advocated for "adaptive reuse" of the Manhattan Detention Complex, the mayor's office indicated that the City will move forward with the mega jail plan, stating, "[T]he administration is continuing the ongoing dismantling of the Manhattan jail site and not pursuing this [adaptive reuse] proposal." *The Latest on Demolition Work for the Jail*, TRIBECA CITIZEN (May 2, 2023), <https://perma.cc/3QPB-FYGT> [hereinafter *Latest on Demolition*] (alteration in original); see Stephon Johnson, *City Hits Pause on Demolition of Manhattan Detention Center After Outcry From Locals*, THE CITY (Apr. 26, 2023, 8:42 PM), <https://perma.cc/9AS6-GHBE>.

¹⁴ Press Release, N.Y.C. Dep't of Design & Constr., City Issues Notice of Intent for the Design and Construction of Four New Borough-Based Jails (Aug. 26, 2021), <https://perma.cc/QJK6-AHPC>; N.Y.C. DEP'T OF DESIGN & CONSTR., REQUEST FOR QUALIFICATIONS DETENTION FACILITIES: NYC BOROUGH-BASED JAILS PROGRAM PIN: 8502020CR0049P-60P Appendix C-1 6 (on file with CUNY Law Review). For a current estimate of the budget for the Manhattan mega jails construction, see *Latest on Demolition*, *supra* note 13.

¹⁵ Press Release, N.Y.C. Off. of the Mayor, Mayor de Blasio Announces Beginning of Major Construction Activities for Borough-Based Jails Program (June 25, 2021), perma.cc/K2JR-QMSR; E. Alex Jung, *Manhattan's Super-Jail Is Already Swallowing Chinatown*, GRUB STREET (Mar. 8, 2023), <https://perma.cc/S2KH-2VPA> (citing Carl Glassman, *Ray of Hope for Jail Tower Foes as Mayor Adams Now Looks for a 'Plan B'*, TRIBECA TRIB (Jan. 18, 2023), <https://perma.cc/548E-RPCT>).

¹⁶ N.Y.C. Off. of the Mayor, *supra* note 15.

I. THE IMPORTANCE OF CHINATOWNS



Photo: The Chinatown Community Fridge is at the end of the sidewalk closed off for the demolition and construction of the mega jail on Baxter Street. September 2022.

The City's efforts to force through the approval of the Manhattan-based jail in Chinatown suggest that the City does not value the importance of Chinatown to Asian Americans. Chinatowns exist because of deep-seated xenophobia and racism, yet they also reflect the vitality of Asian American culture. In the mid-1800s, American society developed intense anti-Chinese racial animus based on the belief that an influx of Chinese laborers would depress white Americans' wages.¹⁷ The State reinforced such discrimination in cases like *People v. Hall*, which applied a California statute to Chinese people so that, along with Black, "Mulatto," and "Indian" witnesses, they could not testify against white men in court.¹⁸ The *Hall* opinion was explicitly racist and xenophobic, describing Chinese immigrants as "a distinct people, living in our community, recognizing no laws of this State . . . ; a race of people whom nature has marked as inferior, and who are incapable of progress or intellectual development beyond a certain point."¹⁹

¹⁷ *Affidavit and Flyers from the Chinese Boycott Case*, NAT'L ARCHIVES, <https://perma.cc/4PC8-6AKK> (last visited Mar. 22, 2023).

¹⁸ *People v. Hall*, 4 Cal. 399, 404-05 (1854) (reversing the murder conviction of a "free white citizen" because his original conviction was based on Chinese witnesses' testimony).

¹⁹ *Id.* at 405.

Such judicial reasoning affirmed the social construction of Chinese immigrants as too foreign and “alien”²⁰ to become American, and it empowered white Americans to commit “open season”²¹ brutalization against Chinese immigrants. By the late 1800s, there were 150 anti-Chinese riots in the American West, including by white miners who set fire to Chinese immigrants’ homes and murdered 28 Chinese people.²² Anti-Chinese sentiment culminated in the Chinese Exclusion Act of 1882,²³ which was the only time the United States has blocked a specific nationality from entering the country.²⁴ The Act lasted until 1943, but a quota-based national origin system restricted Chinese immigration until 1965.²⁵ Because the law offered no protection, Chinese immigrants’ only option was to band together and establish ethnic enclaves.²⁶ Chinatown organizations like the Chinese Consolidated Benevolent Association in Manhattan formed so Chinese immigrants could advocate for equal rights and offer social services to one another.²⁷ Chinatowns provided Chinese immigrants with “a support network [of racial solidarity] and protective shield against racism.”²⁸ The City’s unwavering decision to locate the Manhattan mega jail in Chinatown overlooked this historic importance of Chinatown as a safe haven for Asian Americans.

²⁰ Kartik Naram, *No Place Like Home: Racial Capitalism, Gentrification, and the Identity of Chinatown*, 27 ASIAN AM. POL’Y REV. 31, 33 (2017).

²¹ *Id.*

²² *Id.*

²³ Ch. 126, 22 Stat. 58 (repealed 1943).

²⁴ *Chinese Exclusion Act: United States [1882]*, ENCYC. BRITANNICA, <https://perma.cc/W423-55YH> (last visited Mar. 16, 2023) (describing the Act’s ban on Chinese “skilled and unskilled laborers and [those] employed in mining” entering the country).

²⁵ *Id.* For a timeline of the Chinese Exclusion Act, extensions, and the quota-based immigration system for Chinese immigrants, see *Chinese Exclusion Act (1882)*, NAT’L ARCHIVES, <https://perma.cc/BEZ7-CGS6> (last visited May 10, 2023).

²⁶ *Id.*; Annie Fu, *America’s Lost Chinatowns*, INSIDER (Aug. 23, 2022, 8:58 AM), <https://perma.cc/2BBQ-EKYS>.

²⁷ Michael Kimmelman, *Chinatown, Resilient and Proud*, N.Y. TIMES (Dec. 2, 2020), <https://www.nytimes.com/interactive/2020/12/02/arts/design/chinatown-virtual-walk-tour.html> (on file with CUNY Law Review).

²⁸ *Id.*



Photo: The community fridge on Baxter Street on the same side as the demolition and construction site for the mega jail. September 2022.

A. The State of Chinatowns in the United States

Locating the Manhattan mega jail in Chinatown also angered and distressed the local community because Manhattan Chinatown is among the most prominent remaining Chinatowns in the United States.²⁹ Most people associate Chinatowns with a few major urban areas on the East and West Coasts. Indeed, San Francisco, Los Angeles, Sacramento, and New York City had some of the first Chinatowns.³⁰ Manhattan's Chinatown is also the largest in the United States.³¹ Moreover, many historically thriving Chinatowns that cities once boasted have since ceased to exist.³² For example, San Jose had five Chinatown iterations in its history but does not have a Chinatown today.³³ Upon the emergence of its first Chinatown, San Jose's white residents sought to destroy the Chinese community; subsequently, they terrorized and burned down parts of or entire Chinatowns that Chinese immigrants had built or rebuilt.³⁴ In doing so, white community leaders explicitly campaigned on anti-Chinese messages,

²⁹ See Fu, *supra* note 26.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Adhiti Bandlamudi, *San Jose Had 5 Chinatowns. What Happened to Them?*, KQED (June 17, 2021), <https://perma.cc/2HXX-P9J7>.

³⁴ *Id.*

such as “Chinatown must go.”³⁵ The Chinatowns that still exist are testaments to the strength of resistance against this history of virulent and unrelenting anti-Asian bias and violence in the United States.

In addition to violent acts of terror, land use decisions have also caused the decline of Chinatowns. The 1956 National Interstate and Highways Defense Act³⁶ caused a proliferation of highway construction and health and environmental effects that harmed not only Black and Latinx communities but also Asian communities because Chinatowns tend to be near downtown financial districts close to highways.³⁷ Boston split Chinatown apart after building Interstates 90 and 93 in the late 1950s.³⁸ The construction caused rubble and rats to overrun Asian Americans’ homes in Boston Chinatown, and an “exodus” of families followed.³⁹ Detroit Chinatown reached a peak population of 2,000 people in the 1920s but no longer exists in its original location.⁴⁰ The Detroit Housing Commission razed the area to construct the Lodge Freeway in the 1960s.⁴¹ Later, portions of the area also became a police station and the MGM Grand Casino parking garage.⁴²

Detroit is a more recent example of where violence and land use decisions caused a Chinatown to cease to exist.⁴³ After Detroit’s original Chinatown relocated, most Chinese residents eventually left after a series of violent crimes in the 1970s and 1980s, including the notorious murder of Vincent Chin in 1982.⁴⁴ Despite not being Japanese-American, Vincent Chin’s murder encapsulated a wave of anti-Japanese sentiment in the United States over labor and economic competition.⁴⁵ By 1989, only

³⁵ *Id.*

³⁶ Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, 70 Stat. 374.

³⁷ Claire Wang, *How Infrastructure Package Could Affect U.S. Chinatowns, Long Facing Hidden Tolls*, NBC NEWS (Apr. 6, 2022, 11:12 AM), <https://perma.cc/X22C-BAZH> (discussing how “[t]he effects of freeway construction on Asian communities have historically been overlooked” (quoting historian Michael Liu)).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Fu, *supra* note 26.

⁴¹ *Id.*

⁴² *Id.*

⁴³ See generally Sarah Rahal, *Asian-American Community Sees Signs of Resurgence in Detroit*, DETROIT NEWS, <https://perma.cc/3V85-8UWS> (Feb. 18, 2019, 9:14 AM) (explaining that the vibrant 1950s community of Asian Americans, “once deeply rooted in the city’s history, had scattered”). As one Asian American Detroit resident, Joy Wang, stated, “There’s been a gaping hole of Asian-American visibility in Detroit . . . There’s not a single art space, full museum, [or] community center . . .” *Id.*

⁴⁴ Fu, *supra* note 26; *id.*

⁴⁵ See Li Zhou, *Remembering Vincent Chin—and the Deep Roots of Anti-Asian Violence*, VOX (June 19, 2022 8:00 AM), <https://perma.cc/6EPN-GU2D> (recounting how Ronald Ebens

about 100 Chinese residents remained in Detroit Chinatown, and, today, Asian artists, activists, entrepreneurs, and commissions are trying to revitalize it.⁴⁶ Other Chinatowns, such as those in Washington, D.C. and Philadelphia, have struggled to resist major developments such as sporting arenas and more highways that have encroached on and diminished the geographic area of those Chinatowns.⁴⁷ Examination of Chinatowns in more modern eras shows the deeply rooted racism that led to continued violence or racial indifference to the existence of Chinatowns in urban planning decisions. As a consequence, many historic Chinatowns either no longer exist or are a shell of their vibrant pasts. Ultimately, the trend of Chinatowns across the United States shrinking or disappearing makes New York City's insistence on locating a mega jail in Manhattan Chinatown all the more tragic.

B. Gentrification

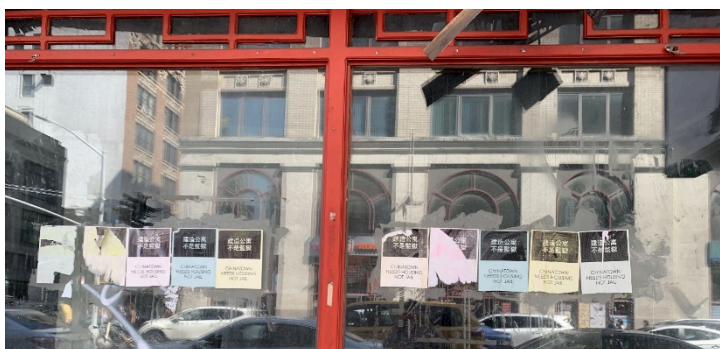


Photo: Signs in vacated retail space near the mega jail's site say, "Chinatown Needs Housing Not Jail." September 2022.

Combined with urban development decisions that reflect racial indifference to historic ethnic communities, gentrification has challenged Chinatown's existence as an enclave for Asian Americans. Constructing the mega jail in Manhattan Chinatown poses an additional blow to the local community on top of this burden of gentrification. Changes in urban development have led millennials and baby boomers to move "back into

and Michael Nitz, two white autoworkers, had argued with Vincent Chin at his bachelor party at a strip club and then shortly after followed Chin outside and brutally beat him to death). Chin's ethnically and xenophobically motivated murder is analogous to Emmett Till's murder for Asian Americans.

⁴⁶ Fu, *supra* note 26; Rahal, *supra* note 43.

⁴⁷ See Deborah Wei, Opinion, *In Philadelphia, a New Threat Looms over Chinatown*, WASH. POST (Aug. 24, 2022, 1:40 PM), <https://perma.cc/2UNJ-5E4Y>.

center cities,”⁴⁸ and real estate prices in Chinatown have quickly soared in response.⁴⁹ The real estate industry has marketed Manhattan Chinatown to appeal to gentrifiers as an “exotic yet chic neighborhood on the cusp of a major transformation” and in between the “safety and styl[ishness] of neighboring SoHo and Tribeca.”⁵⁰

In New York City, gentrification has displaced groups of color from their historic neighborhoods not only in the outer boroughs,⁵¹ but also in Manhattan Chinatown, which is substantially located in one of New York’s most expensive zip codes: 10013.⁵² Gentrification has also displaced longtime Chinatown residents across the country.⁵³ In 1990, Asians comprised over half the combined population of Chinatowns in Boston, Philadelphia, and New York City.⁵⁴ By 2010, Asians were still the largest demographic group in all three cities’ Chinatowns, but they comprised less than half of all residents, with white populations currently growing faster in Chinatowns than the rest of each overall city.⁵⁵ From 2000 to 2015, the Asian population decreased in only four sub-boroughs in New York City, one of which was Manhattan Chinatown, which had the second-highest Asian population in 2000.⁵⁶ The population of Washington, D.C.’s Chinatown has also fallen to about 300 residents from its peak of about 3,000.⁵⁷

⁴⁸ Alana Semuels, *The End of the American Chinatown*, ATLANTIC (Feb. 4, 2019), <https://perma.cc/J6F8-H3PW>.

⁴⁹ *See id.*

⁵⁰ Naram, *supra* note 20 (quoting CAAAV: ORGANIZING ASIAN COMMUNITIES & URB. JUST. CTR. CMTY. DEV. PROJECT, CONVERTING CHINATOWN: A SNAPSHOT OF A NEIGHBORHOOD BECOMING UNAFFORDABLE AND UNLIVABLE 12 (2008)).

⁵¹ *E.g.*, Anna Quinn, *Bed-Stuy Lost 22K Black Residents, Gained 30K Whites This Decade*, PATCH (Aug. 18, 2021, 12:30 PM), <https://perma.cc/PU6A-8YKC> (explaining that Bed-Stuy’s population was majority-Black in 2010 but then less than half Black by 2020). *See generally* Press Release, N.Y. Univ. Furman Ctr., Report Analyzes New York City’s Gentrifying Neighborhoods, Finds Dramatic Demographic Shifts (May 9, 2016), <https://perma.cc/26LK-Q7JF> (explaining that New York City’s “gentrifying neighborhoods saw an increase in white population, despite a citywide decrease” at the same time that there was a “larger decrease in the [B]lack population through 2014 than the city as a whole” in gentrifying neighborhoods).

⁵² Tom Fish, *The 20 Wealthiest Zip Codes in New York*, NEWSWEEK (May 21, 2021, 7:00 PM), <https://perma.cc/KXT7-92MT>.

⁵³ *See Semuels, supra* note 48.

⁵⁴ BETHANY Y. LI ET AL., CHINATOWN THEN AND NOW: GENTRIFICATION IN BOSTON, NEW YORK, AND PHILADELPHIA 2 (2013), <https://perma.cc/6NB7-H9QW>.

⁵⁵ LI ET AL., *supra* note 54, at 2 (“Furthermore, of all racial groups, only the White population in New York’s Chinatown has grown in the last decade.”).

⁵⁶ Andrew Small, *Mapping the Modern Transformation of New York City*, BLOOMBERG (May 5, 2017, 4:34 PM), <https://perma.cc/5PNJ-4L97>.

⁵⁷ *See Semuels, supra* note 48.

Gentrification erases the unique importance of Chinatown to Asian Americans who may otherwise struggle to afford housing to survive.⁵⁸ As Blasian March founder Rohan Zhou-Lee has written, “Chinatown belongs not only to Chinese [and Asian] residents but also to the Chinese [and Asian] folks who have been displaced by gentrification.”⁵⁹ The Chinatowns in the United States that survived became self-sufficient enclaves for Chinese immigrants where they could find affordable housing, potentially better employment than they could outside Chinatowns “in the mainstream American economy,” essential goods and social services, and social networks.⁶⁰ Compared to some other Chinatowns, Manhattan Chinatown has had more success resisting gentrification. In part, some Chinese owners have banded together to create community associations that own and refuse to sell Chinatown real property.⁶¹ These efforts reflect Chinatown communities’ desire for Chinatowns to resist gentrification and harmful land use policies so that they can remain places where Asian Americans continue to thrive.

II. CHINATOWN PROTESTS OVER THE MANHATTAN MEGA JAIL MIRROR THOSE IN THE 1980S OVER THE MANHATTAN DETENTION COMPLEX

About 40 years ago, local community uproar over Mayor Ed Koch’s proposal to build one of the soon-to-be-demolished Manhattan Detention Complex towers foreshadowed the current conflict over the mega jail’s construction in Chinatown. At the time, the City was under court order to close Rikers’ Men’s House of Detention.⁶² In 1982, 12,000 people in Chinatown protested Mayor Koch’s proposal to build one of the Manhattan Detention Complex towers.⁶³ The City’s reasoning for building the first

⁵⁸ See, e.g., Agnes Constante, *Advocates Worry Housing Issues May Lead to an Asian American Census Undercount*, NBC NEWS (Aug. 21, 2018, 4:30 AM), <https://perma.cc/LN2R-DMNM> (describing how “[i]n San Francisco’s Chinatown, an increasing number of families have been squeezing into single room occupancy units”). See generally *Rise Up for Asian Americans and Pacific Islanders: Timeline of Systemic Racism Against AAPI*, STANFORD LIBRS., <https://perma.cc/92XJ-8K2L> (last visited Jan. 21, 2023) (describing how in 2019, Asian Americans became “the fastest-growing homeless population in San Francisco and Los Angeles”).

⁵⁹ See Rohan Zhou-Lee, *The New Mega Jail Coming to NYC’s Chinatown Is a Physical Reminder of Anti-Asian Hate*, PRISM (Mar. 24, 2022), <https://perma.cc/MF33-3ZGN>.

⁶⁰ See Naram, *supra* note 20.

⁶¹ See Nick Tabor, *How Has Chinatown Stayed Chinatown?*, N.Y. MAG.: INTELLIGENCER (Sept. 24, 2015), <https://perma.cc/6RPZ-LNS9>.

⁶² Maurice Carroll, *Action on Chinatown Jail Put off After Protest*, N.Y. TIMES, Nov. 19, 1982, at A1.

⁶³ *Id.* at A1-B2.

tower was to “move prisoners to court more quickly and cheaply.”⁶⁴ Manhattan Community Boards 1 and 3 opposed the plan,⁶⁵ and residents and community leaders raised many of the same concerns then that their modern counterparts have raised now against the mega jail. They argued that the jail would “harm” Chinatown, and that, “with the Tombs and the courthouses nearby, [Chinatown] already has a ‘disproportionate’ share of such institutions.”⁶⁶ The City ultimately proceeded to build Manhattan Detention Complex’s North and South Towers, but it offered a concession to Chinatown by constructing the Chung Pak senior affordable housing development.⁶⁷ During this contentious period, Mayor Koch revealingly shared his political calculations to locate the Manhattan Detention Complex in Chinatown, remarking about the community, “[If] [y]ou don’t vote, you don’t count.”⁶⁸ Based on the City’s lack of responsiveness to the local community’s concerns about the mega jail under former Mayor de Blasio and now Mayor Adams, both mayors have appeared to value their constituents in Manhattan Chinatown as little as Mayor Koch did in the 1980s. In a twist of fate that underscores Chung Pak’s existence as a concession by the City, Chung Pak will bear much of the harm from the impending demolition and construction for the Manhattan mega jail.⁶⁹

III. THE PLAN FOR THE MEGA JAIL: CLOSE RIKERS AND OPEN SMALLER BOROUGH-BASED JAILS

Accordingly, history has repeated itself; the City’s justifications for the Manhattan mega jail are remarkably similar to those in the 1980s for the construction of the Manhattan Detention Complex towers. As part of his criminal justice reform initiatives, Mayor de Blasio made “the official

⁶⁴ *Id.* at B2.

⁶⁵ *Id.* at B2. See generally Rachel Holliday Smith, *How to Join a Community Board, and What to Know Before You Apply*, THE CITY (Mar. 24, 2023, 2:52 PM), <https://perma.cc/B3RK-3JRP> (explaining that the borough president appoints up to 50 volunteer-applicants to serve on a community board, which makes recommendations to city agencies and elected officials in matters such as “development projects that are subject to the city’s land use approval process and yearly budget requests for the area”).

⁶⁶ Carroll, *supra* note 62, at A1. “The Tombs” is a colloquial name for the Manhattan Detention Complex and refers to the original jail structure. Sewell Chan, *Disgraced and Penalized, Kerik Finds His Name Stripped Off Jail*, N.Y. TIMES (July 3, 2006), <https://www.nytimes.com/2006/07/03/nyregion/03kerik.html>. The Metropolitan Correctional Center is located at 150 Park Row, New York, NY 10007, also in Chinatown. *MCC New York*, FED. BUREAU OF PRISONS, <https://perma.cc/BU5A-VUUP> (last visited Mar. 12, 2023).

⁶⁷ Ed Litvak, *Community Board 3 Seeks Voice in Planning Chinatown Jail Expansion*, THE LO-DOWN, <https://perma.cc/UC8M-4SZX> (Apr. 5, 2018).

⁶⁸ *Id.*

⁶⁹ *Id.*

policy” of New York City to close Rikers.⁷⁰ To do so, his plan calls on the City to reduce the jail population⁷¹ and transfer the reduced jail population to newly constructed, smaller borough-based jails in the Bronx, Manhattan, Brooklyn, and Queens.⁷² The plan proposes that the borough-based jails be operational by 2027.⁷³ The Manhattan site will be at 124-125 White Street, New York, NY 10013.⁷⁴

Broadly, the goal for the borough-based jails is to provide a safer and more humane alternative to Rikers. The plan calls for demolishing the Manhattan Detention Complex North and South Towers and constructing one massive new tower, or jailscraper.⁷⁵ The final maximum height will be 295 feet.⁷⁶ The plan estimates that the jail will be up to 697,675 zoning square feet of floor area.⁷⁷ The new jail appears to take up more than two-thirds of one avenue block, according to the City’s diagrams.⁷⁸ The de Blasio administration argued that the newly constructed borough-based jails will improve New York City jails’ safety.⁷⁹ The plan has also proposed building units designed for individuals with serious mental illness.⁸⁰ In the Borough-Based Jails Program, providing improved physical building conditions is key to making detention centers more humane.

The de Blasio plan also imagines implementing educational, vocational, and recreational programming for those detained.⁸¹ The plan seeks to improve the jails’ accessibility for visits.⁸² The de Blasio administration emphasized that siting the new jails to be more accessible than Rikers will benefit detainees so that staff, visitors, defense attorneys, and social or

⁷⁰ N.Y.C. OFF. OF THE MAYOR, *supra* note 4, at 4.

⁷¹ N.Y.C. DEP’T OF CORR., BOROUGH BASED JAILS FINAL ENVIRONMENTAL IMPACT STATEMENT S-1 (2019) (describing the City’s goal of further reducing its jail population to 4,000 people from its goal of 5,000 in the City’s *Smaller Safer Fairer* report for closing Rikers).

⁷² *Id.*

⁷³ N.Y.C. PLAN. COMM’N, FINAL REPORT C190333 PSY 8 (2019), <https://perma.cc/PQ59-XDEU>.

⁷⁴ *Id.* at 80.

⁷⁵ *Id.* at 16-17, 32-33. The plan also describes Community Board 1’s demand that the City present an alternative proposal for the Manhattan-based jail that would “raz[e] and replac[e]” only the Manhattan Detention Complex’s North Tower, leaving the South Tower intact. *Id.* at 33.

⁷⁶ Fuleihan Letter, *supra* note 2, at 15 (2019) (describing the reduction in height from 450 feet and a 13.1 floor area ration (“FAR”) density proposed in the draft environmental impact statement).

⁷⁷ N.Y.C. Dep’t of Design & Constr., *supra* note 14, at Appendix C-1 1.

⁷⁸ N.Y.C. DEP’T OF CORR., *supra* note 71, at Figures S-15, S-17.

⁷⁹ N.Y.C. OFF. OF THE MAYOR, *supra* note 4, at 30-31 (citing reduced rates of serious injuries of detainees and corrections officers associated with improved physical conditions of the jails, prohibition of contraband, and improved corrections officer training).

⁸⁰ *Id.* at 32-33.

⁸¹ *Id.* at 39-40.

⁸² N.Y.C. DEP’T OF CORR., *supra* note 71, at S-16.

other service providers can reach the jail more easily.⁸³ The plan advocates for integrating the jails in more accessible neighborhoods to be more cost efficient so that the City will not have to spend time and resources transporting detainees to court.⁸⁴ This cost efficiency justification is the same argument that the proponents of building the Manhattan Detention Complex towers used in the 1980s.⁸⁵ The “guiding urban design principle” for the borough-based jails is locating and constructing them so they will “provid[e] added value and benefits to the surrounding neighborhoods” and “minimize the [design’s] effect on the surrounding neighborhoods.”⁸⁶ However, this guiding urban design principle is the City’s one-sided assertion. Community Boards 1 and 3, not to mention individual community members, have expressed vehement opposition to the mega jail that the City has ignored.

IV. THE LAND USE APPROVAL PROCESS, MOTIVATIONS FOR THE MEGA JAIL, AND THE COMMUNITY RESPONSE

A. Brief Summary of the Overlapping Environmental Review in the City Environmental Quality Review (“CEQR”) and Uniform Land Use Review Procedure (“ULURP”)

In 1969, Congress enacted the National Environmental Policy Act (“NEPA”) requiring all federal agencies to prepare environmental impact assessments to “evaluate the environmental consequences of proposed projects and to consider alternatives.”⁸⁷ Consequently, New York State enacted the State Environmental Quality Review Act (“SEQRA”), which requires state and local agencies to examine the environmental impact of discretionary projects.⁸⁸ New York City then established the City Environmental Quality Review, which represents the City’s specific procedures for city agencies to review the environmental impacts of actions.⁸⁹ The CEQR process often begins “as early as possible” in the design or planning stage of a project that requires land use approval and must be completed before the City engages in, funds, or approves a project.⁹⁰ The Uniform Land Use Review Procedure (“ULURP”) is the City’s public engagement and binding review process that approves or denies land use

⁸³ See N.Y.C. PLAN. COMM’N, *supra* note 73, at 4-5.

⁸⁴ *Id.* at 5.

⁸⁵ See Carroll, *supra* note 62, at B2.

⁸⁶ *Id.* at 6-7.

⁸⁷ N.Y.C. MAYOR’S OFF. OF ENV’T COORDINATION, CEQR: CITY ENVIRONMENTAL QUALITY REVIEW TECHNICAL MANUAL 1-1 (2021), <https://perma.cc/PTX3-LSGZ>.

⁸⁸ See N.Y.C. MAYOR’S OFF. OF ENV’T COORDINATION, *supra* note 87, at 1-1 - 1-2.

⁸⁹ See *id.* at 1-1, 1-2.

⁹⁰ *Id.* at 1-1.

applications.⁹¹ For major development projects that will have a significant adverse environmental impact, there is an overlapping environmental review in the CEQR and ULURP⁹² that occurs between the ULURP application's filing and completion.⁹³

Arguably because the Borough-Based Jails Program was a key priority for Mayor de Blasio, the City rushed through the environmental review and development approval of the Manhattan mega jail and curtailed the Chinatown community's ability to provide input.⁹⁴ Throughout the process, the Chinatown community protested that the City prioritized spending for jails over investing in services for communities,⁹⁵ particularly those of Black and Brown populations.⁹⁶ The Manhattan mega jail's approval despite fierce community protests reflects the City's prioritization of real estate development in disregard of longtime communities' self-determination for their neighborhoods, reminiscent, for example, of Columbia University's massive expansion into West Harlem in the 2000s.⁹⁷

⁹¹ CITIZENS BUDGET COMM'N, NEW YORK CITY'S LAND USE DECISION-MAKING PROCESS 2 (2022), <https://perma.cc/35D9-GKP5>.

⁹² See N.Y.C. MAYOR'S OFF. OF ENV'T COORDINATION, *supra* note 87, at 1-26 (citing *CEQR and ULURP*, N.Y.C. MAYOR'S OFF. OF ENV'T COORDINATION, <https://perma.cc/PJD7-DWL3> (last visited Mar. 19, 2023)).

⁹³ See *id.*

⁹⁴ See *infra* Part III, Section IV.B.

⁹⁵ See Ishak, *supra* note 1 (quoting Welcome to Chinatown co-founder Vic Lee saying, "[The City is] really furthering money into mass incarceration, all while doing this destroying [Chinatown].").

⁹⁶ See Dashiell Allen, *Is It Possible to Close Rikers Without Building a New Jail in Chinatown?*, VILL. SUN (Feb. 20, 2022), <https://perma.cc/8SSX-U8JH>. Neighbors United Below Canal Street's co-founder Jan Lee equated the City's support for the Borough-Based Jails Program to the City effectively saying to Black and Brown men, "Let's just circumvent giving all the services in your community. We're just going to give [them] to you when you're in jail." *Id.*

⁹⁷ See Sheila Foster, *Columbia University Expansion into West Harlem, New York City*, in 6 STRENGTHENING ENVIRONMENTAL REVIEWS IN URBAN DEVELOPMENT 143, 148-49 n. 49 (2018), <https://perma.cc/H8X5-BPKE> (describing the City's support for Columbia's secondary goal of "facilitat[ing] the revitalization, improvement, and redevelopment" of West Harlem due to the plan's alignment with Mayor Michael Bloomberg's vision of "hyperactive development" for the City); Timothy Williams, *In West Harlem Land Dispute, It's Columbia vs. Residents*, N.Y. TIMES (Nov. 20, 2006), <https://www.nytimes.com/2006/11/20/nyregion/20columbia.html> (on file with CUNY Law Review) (describing the local community's opposition to Columbia's expansion).

B. The decision to locate the Manhattan-based jail in Chinatown appeared predetermined.

From the beginning of the environmental review and ULURP, the City's actions made it clear that approving the Borough-Based Jails Program was a top priority for the de Blasio administration, and that centering the needs of Asian Americans in Chinatown was not. On August 2, 2018, the City initially conducted a public hearing and informed the Manhattan Chinatown community that the City was considering 80 Centre Street and 124-125 White Street as potential sites for the Manhattan-based jail.⁹⁸ On August 14, 2018, the New York City Department of Correction ("DOC"), the designated lead agency overseeing the environmental review, issued an environmental assessment form ("EAF") with a positive declaration that the mega jail would have significant effects on the environment, requiring preparation of a complete environmental impact statement ("EIS").⁹⁹ The DOC published the Draft Scope of Work to Prepare a Draft Environmental Impact Statement, CEQR No. 18DOC001Y, for all four proposed borough-based jails, a document that tellingly only identified 80 Centre Street as a suitable location for the Manhattan jail.¹⁰⁰ Identifying only one location for the Manhattan-based jail suggested that the de Blasio administration had already preordained Chinatown as the site for the Manhattan mega jail.

The City's decision to ultimately locate the Manhattan mega jail at 124-125 White Street was perplexing because, in comparison, 80 Centre Street may have required less demolition and new construction. Specifically, 80 Centre Street would have allowed the potential "reuse or redevelopment" of the North Tower of the Manhattan Detention Complex.¹⁰¹ In contrast, the City initially considered 124-125 White Street unsuitable because the site could not be expanded to "meet the needs" of the proposed Manhattan-based jail, was "limited with regard to capacity," and would "not provide for the quality of life sought in more modern detention facilities, with regard to space needs, sunlight, and social spaces."¹⁰²

The City's environmental review of the Manhattan mega jail particularly revealed its disregard of the Chinatown community's concerns. On September 27, 2018, the DOC held what was supposed to be a publicly accessible meeting on the Draft Scope of Work and set October 29, 2018,

⁹⁸ *Neighbors United Below Canal v. Deblasio*, No. 100250/2020, 2020 WL 5632311, at *3 (N.Y. Sup. Ct. Sept. 21, 2020).

⁹⁹ *Id.* at *3.

¹⁰⁰ *Id.* at *3-4.

¹⁰¹ *Id.* at *4.

¹⁰² *Id.* at *3.

as the end of the public comment period.¹⁰³ However, many community members were “shut out of the meeting due to the insufficient size of the meeting room.”¹⁰⁴ Because the City’s previous response to community members’ concerns about locating a Manhattan-based jail at 80 Centre Street moved the jail to a likely even more harmful location in Chinatown, community members were also uncertain that the City would receive their comments in good faith. The community members who could attend asked for the community to be able to provide more input.¹⁰⁵ They asked for the environmental review process to address alternative sites outside of Chinatown, as well as “traffic and pedestrian congestion, . . . impacts of demolition and construction on public health and airborne pollution,” and the impacts on the “unique nature of the Chinatown and nearby Little Italy historic districts.”¹⁰⁶

In December 2018 after the public comment period on the Draft Scope of Work for 80 Centre Street had ended, the DOC recommended locating the mega jail at 124-125 White Street in spite of its initial assessment that 124-125 White Street was an inferior location.¹⁰⁷ Following this recommendation, the DOC and other city agencies did not hold another public comment session, conduct a new environmental review, or address the shortcomings of 124-125 White Street.¹⁰⁸ On March 25, 2019, the Department of City Planning (“DCP”) certified the ULURP applications, including for the Manhattan mega jail.¹⁰⁹

On August 23, 2019, the DOC published the Final Environmental Impact Statement (“FEIS”).¹¹⁰ The FEIS concluded that there were no “significant adverse impacts” for land use, zoning, or public policy issues like socioeconomic conditions, open space, shadows, pedestrian accessibility, air quality, noise, public health, or neighborhood character.¹¹¹ Without finding significant adverse impacts in the environmental review,

¹⁰³ *Id.* at *5.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at *6. There also was some concern about the difficulty relocating the offices located at 80 Centre Street. See Carl Glassman, *In Face of Furious Opposition, City Backs Down on 80 Centre St. Jail*, TRIBeca TRIB (Nov. 28, 2018), <https://perma.cc/D53Q-4KA3>.

¹⁰⁸ See Neighbors United Below Canal, 2020 WL 5632311, at *6.

¹⁰⁹ See N.Y.C. PLAN. COMM’N, *supra* note 73; MANHATTAN CMTY. BD. 1, RESOLUTION RE: BOROUGH BASED JAIL SYSTEM PLAN & MANHATTAN DETENTION COMPLEX UNIFORM LAND USE REVIEW PROCEDURE (ULURP) APPLICATIONS (2019), <https://perma.cc/KNP8-PDX7>.

¹¹⁰ *CEQR Access: 18DOC001Y Borough Based Jail System*, N.Y.C. MAYOR’S OFF. OF ENV’T COORDINATION, <https://perma.cc/M5QG-9WWZ> (last visited Mar. 16, 2023).

¹¹¹ See N.Y.C. DEP’T OF CORR., BOROUGH BASED JAILS FINAL ENVIRONMENTAL IMPACT STATEMENT EXECUTIVE SUMMARY S-88 to S-91 (2019), <https://perma.cc/SVJ5-ELVU>.

the City had less to engage the Chinatown community about, and it was likely easier to expedite the Borough-Based Jails Program's approval.

The City also subjectively framed some parts of the FEIS to explain away significant adverse impacts of the mega jail on Chinatown. For example, the FEIS claimed that the mega jail would not impact Chinatown's urban design because there is a cluster of taller buildings in the Civic Center area before entering Chinatown, and the mega jail would "contribute to the variety of buildings that compose the urban design character of the study area."¹¹² At the same time, the FEIS acknowledged that "lower density" and "three- to four-story buildings" make up Little Italy and the Chinatown Historic District.¹¹³ However, the FEIS did not acknowledge that Chinatown is distinct in character from neighborhoods with towering modern buildings such as Midtown Manhattan. The FEIS also failed to discuss how adding tall buildings like the mega jail may conceivably set a harmful precedent for the City to build more tall buildings in Chinatown at the expense of its historic lower-density community buildings.

The FEIS viewed the mega jail's disruption to Chinatown's low-density historic character in a vacuum without contextualizing neighborhood character. The report acknowledged that there would be significant adverse impacts to Chinatown's "historic and cultural resources."¹¹⁴ However, the FEIS focused on the mega jail "replac[ing]" the Manhattan Detention Complex as another one of the multiple civic and institutional buildings already in Manhattan Chinatown.¹¹⁵ The CEQR Technical Manual, which explains the CEQR process and procedures, acknowledges that this evaluation of impacts on neighborhood character is more "subjective" than other technical areas.¹¹⁶

The FEIS also overlooked the mega jail's "significant adverse impact in one of the technical areas that contribute to neighborhood character."¹¹⁷ In doing so, the FEIS ignored how developing alternatives or mitigation measures in the technical areas that contribute to neighborhood character—such as land use, urban design and visual resources, historic resources, socioeconomic conditions, transportation, and noise reduction—could counterbalance the mega jail's likely significantly adverse impact on Manhattan Chinatown's neighborhood character.¹¹⁸ Instead of attempting to propose such ameliorative measures to mitigate damage to Manhattan Chinatown's neighborhood character, the FEIS solely found

¹¹² See *id.* at S-56 to S-57.

¹¹³ *Id.*

¹¹⁴ *Id.* at S-62.

¹¹⁵ *Id.*

¹¹⁶ N.Y.C. MAYOR'S OFF. OF ENV'T COORDINATION, *supra* note 87, at Introduction-1, 3-3.

¹¹⁷ N.Y.C. DEP'T OF CORR., *supra* note 111, at S-62.

¹¹⁸ N.Y.C. MAYOR'S OFF. OF ENV'T COORDINATION, *supra* note 87, at 21-1, 21-6, 21-7.

significant adverse impacts for traffic and pedestrian accessibility near construction work for the mega jail.¹¹⁹ Yet, it is hard to believe that, after assessing the impact of one of the few jailscrapers in the world towering over Chinatown, the FEIS drafters would conclude that making space for the jailscrapper would not take away from the neighborhood's historic character.

To the extent that the FEIS addressed community opponents' feedback, it heavily relied on mitigations to conclude that there would be minimal significant adverse impact. Community concerns included the mega jail's potential violation of the Fair Share Criteria, which provide guidelines to assess "whether the City [plans to] unfairly sit[e] undesirable municipal projects in poor or minority neighborhoods that may already contain an abundance of such projects."¹²⁰ The community also raised concerns about the mega jail's harmful impacts on the businesses and residents located closest to the mega jail's construction on Baxter Street and at the Chung Pak Senior Center, as well as on socioeconomic conditions more broadly.¹²¹ The FEIS found that some of these concerns did not meet the thresholds to warrant mitigation; for example, concerns about socioeconomic conditions were not addressed because the DOC's benchmark requires that a project impacts 100 employees.¹²² Alternatively, the FEIS concluded that many of the community's concerns did not reach the level of significant adverse impacts because the builders would implement mitigations for public health, air quality, noise, and vibration.¹²³

The FEIS avoided analyzing the potential negative impacts that the mega jail's construction would foreseeably cause despite mitigations. The FEIS did not raise the potential unique negative health impacts on Chinatown after using preventative measures from the demolition, excavation, and construction of such a massive project.¹²⁴ Adding to Manhattan Chinatown's entrenched opposition to the mega jail, the precursor to the FEIS, the Draft Environmental Impact Statement ("DEIS"), did not ana-

¹¹⁹ N.Y.C. DEP'T OF CORR., *supra* note 111, at S-66 to S-67.

¹²⁰ *Neighbors United Below Canal v. Deblasio*, No. 100250/2020, 2020 WL 5632311, at *7 (N.Y. Sup. Ct. Sept. 21, 2020); *see* N.Y.C. PLAN. COMM'N, *supra* note 109, at 191, 193 (citing MANHATTAN CMTY. BD. 1, *supra* note 109, at 9-12). *See generally* N.Y.C. MAYOR'S OFF. OF ENV'T COORDINATION, *supra* note 87, at 1-26 (summarizing the Fair Share Criteria and explaining the difference in perspective between analyzing the Fair Share Criteria and CEQR).

¹²¹ *See* N.Y.C. PLANNING COMM'N, *supra* note 73, at 192, 194 (citing MANHATTAN CMTY. BD. 1, *supra* note 109, at 9-12).

¹²² N.Y.C. DEP'T OF CORR., *supra* note 111, at S-52.

¹²³ *Id.* at S-61 to S-63.

¹²⁴ *See id.* at S-67 (listing historic and cultural resources, transportation, and construction transportation as the only "unavoidable adverse impacts").

lyze any alternative Manhattan sites for the jail, whether DOC- or privately owned, other than 80 Centre Street and 124-125 White Street.¹²⁵ The FEIS also only analyzed the mega jail's hypothetical impacts on nearby pedestrian and vehicular traffic.¹²⁶ The FEIS could not conduct a more accurate traffic study because the City's decision to use the more expedient and potentially cost-saving "design-build" method of contracting allows the final design and layout of the jail to change during building.¹²⁷ The absence of significant adverse impacts in the environmental review for one of the tallest jails in the world suggested the intractability of the City's plan to locate the Manhattan mega jail in Chinatown.

C. ULURP

The City's management of the ULURP made the Borough-Based Jail Program's approval appear predetermined, despite the Manhattan Chinatown community's opposition. ULURP is the City's public engagement and binding review process that approves or denies land use applications.¹²⁸ Actions under Section 197-c(a) of the New York City Charter are subject to ULURP; these actions include changes to the city map, zoning changes, discretionary special permits that can modify zoning controls such as use and bulk, and site selection for capital projects, including the selection of sites for new city facilities.¹²⁹ The borough president, community board, and City Council receive a copy of the ULURP application shortly after the project files its application.¹³⁰ The borough board, which comprises the borough president and all affected community board chairs and City Council members, also receives the application.¹³¹ The City must issue a negative declaration, conditional negative declaration, or a notice of completion of a DEIS before the DCP certifies the application.¹³² There

¹²⁵ N.Y.C. DEP'T OF CORR., NEW YORK CITY BOROUGH-BASED JAIL SYSTEM DRAFT ENVIRONMENTAL IMPACT STATEMENT S-15 (2019), <https://perma.cc/L9WU-8X5J> (discussing how the City had only considered 124-125 White Street and 80 Centre Street for site selection for the Manhattan-based jail and concluding that the "No Action Alternative" would not meet the goals and objectives of the proposed borough-based jails); *Neighbors United Below Canal*, 2020 WL 5632311, at *12.

¹²⁶ *Neighbors United Below Canal*, 2020 WL 5632311, at *30.

¹²⁷ *Id.* at *11.

¹²⁸ CITIZENS BUDGET COMM'N, *supra* note 92.

¹²⁹ *Step 5: Uniform Land Use Review Procedure (ULURP) Actions Requiring ULURP*, N.Y.C. DEP'T OF CITY PLAN., <https://perma.cc/J3JX-XW2H> (last visited Aug. 5, 2023).

¹³⁰ *Step 5: Uniform Land Use Review Procedure (ULURP) Filing of Application*, N.Y.C. DEP'T OF CITY PLAN., <https://perma.cc/U3GE-STZA> (last visited Mar. 17, 2023).

¹³¹ *Id.*

¹³² *Step 5: Uniform Land Use Review Procedure (ULURP) Certification*, N.Y.C. DEP'T OF CITY PLAN., <https://perma.cc/ZA72-U83P> (last visited Mar. 17, 2023).

is no mandated timeline to complete such pre-certification review.¹³³ The DCP sends certified applications within nine days to the affected community board, borough president, City Council member, and, if appropriate, to the borough board.¹³⁴

D. Community Board Review

The community boards affected by the Manhattan mega jail were unable to significantly influence the land use approval process or block the plan for the mega jail. Once the DCP certifies the ULURP application, the affected community board has 60 days to review the proposal, hold a required public hearing,¹³⁵ and adopt and submit a written recommendation to the DCP, applicant, borough president, and, when appropriate, the borough board.¹³⁶ Subsequently, the board can render a “purely advisory” decision about the application before the borough president’s office reviews the application.¹³⁷

The City also limited public participation in the ULURP application for the Borough-Based Jails Program. On September 5, 2019, the City conducted only one public ULURP hearing for all four jails.¹³⁸ While 124-125 White Street is located within Manhattan Community District 1, many of the most impacted businesses and residents are in Manhattan Community District 3¹³⁹ because the mega jail site is located close to the border of both community districts on Baxter Street.¹⁴⁰ Yet Community Board 3 had to urge the Manhattan borough president to include its members on the task force to shape the Manhattan jail plan.¹⁴¹ Community Board 3 ultimately collaborated with Community Board 1 to share local community input on the Borough-Based Jails Program, including jointly meeting with Community Board 1 on September 6, 2018, and sending its

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *ULURP Explained*, CITYLIMITS, <https://perma.cc/U8HZ-6GH6> (last visited Mar. 17, 2023); *Step 5: Uniform Land Use Review Procedure (ULURP) Community Board Review*, N.Y.C. DEP’T OF CITY PLAN., <https://perma.cc/6EXH-4JDW> (last visited Mar. 17, 2023).

¹³⁶ N.Y.C. DEP’T OF CITY PLAN., *supra* note 135.

¹³⁷ CITYLIMITS, *supra* note 135.

¹³⁸ *Neighbors United Below Canal v. Deblasio*, No. 100250/2020, 2020 WL 5632311, at *15 (N.Y. Sup. Ct. Sept. 21, 2020).

¹³⁹ *See id.*; *see also* Litvak, *supra* note 67.

¹⁴⁰ *See Community District Profiles: Manhattan Community District 1*, N.Y.C. DEP’T OF CITY PLAN., <https://perma.cc/KU7V-4Y3E> (last visited Jan. 17, 2023) (showing that Baxter Street is one of the borders between Community Board 1 and Community Board 3).

¹⁴¹ *See* Litvak, *supra* note 67.

resolution to Community Board 1 for inclusion in its response to the ULURP application.¹⁴²

Both Community Boards 1 and 3 supported closing Rikers as a matter of “criminal justice reform.”¹⁴³ However, both community boards expressed that the City did not engage with them at any point, including during the earlier land use approval stage when the City issued the draft scope of work for the Manhattan mega jail to be at 80 Centre Street. Community Board 3 issued a resolution that called for the City to analyze certain environmental, economic, and traffic impacts, and sought clarification on how the City had calculated certain community benefits and environmental benchmarks.¹⁴⁴ The resolution specifically called for the City to expand the environmental review study to over a 400-foot radius and to address the mega jail’s impact on small businesses, parking, and traffic as a then-planned 40-story building in the area.¹⁴⁵ More broadly, the resolution sought an explanation for why the massive undertaking of constructing four giant jails would have only one ULURP application instead of four.¹⁴⁶ It also asked whether the City had reviewed any alternative sites for the Manhattan-based jail within a quarter-mile radius.¹⁴⁷

Community Board 1 unanimously voted to disapprove the proposed ULURP application regarding the Manhattan jail and for the City Planning Commission to refile the application with the Board’s modifications.¹⁴⁸ Community Board 1 objected to the “opaque site selection and lack of community input,” particularly regarding any proposed “compensating amenities to the community,” “neighborhood integration,” and oversight of design, demolition and construction, environmental impact and mitigation, and “operations and community space programming.”¹⁴⁹ Community Board 1 also pointed out that the jail’s “bed-to-population ratio” was the “second-highest in the city and exceed[ed] the citywide ratio.”¹⁵⁰ Therefore, the community board’s report implied that the projected daily jail population was disproportionately located in Manhattan

¹⁴² Memorandum from Alysha Lewis-Coleman et al., Chairs, Manhattan Cmty. Bd. 3, to Cynthia Brann, Commissioner, N.Y.C. Dep’t of Corr. (Sept. 27, 2018), <https://perma.cc/KRH6-75JW> [hereinafter Cmty. Bd. 3 Memorandum]; *id.*

¹⁴³ See N.Y.C. PLAN. COMM’N, *supra* note 73, at 34; Cmty. Bd. 3 Memorandum, *supra* note 142.

¹⁴⁴ Cmty. Bd. 3 Memorandum, *supra* note 142.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ N.Y.C. PLAN. COMM’N, *supra* note 73, at 24-26, 32-35.

¹⁴⁹ *Id.* at 33-35

¹⁵⁰ *Id.* at 33. The bed-to-population ratio addresses each jail’s share of the City’s total detainees in relation to the community district’s population.

and should be “spread more fairly to other facilities.”¹⁵¹ Community Board 1 advocated for a significantly scaled-back footprint for the Manhattan mega jail. Community Board 1 described the proposed structure as “grossly out of scale, being more than 30% bigger and bulkier than the [area’s] zoning allowed” and asserted that a new facility “should respect . . . the zoning and character of the surrounding area.”¹⁵² The board’s report ultimately recommended only demolishing and constructing a new jail facility at the Manhattan Detention Complex’s North Tower and renovating the South Tower.¹⁵³



Photo: Updated progress on the mega jail site in October 2023 seen from the corner of Walker Street and Baxter Street.

E. Borough President’s Review

Gale Brewer, who was the Manhattan borough president at the time, supported closing Rikers despite Community Boards 1 and 3’s strong opposition. Following the community board’s review, the borough president has 30 days from receipt of the board’s recommendation to submit a written recommendation to the City Planning Commission.¹⁵⁴ The borough

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ CITYLIMITS, *supra* note 135.

board may (within the borough president's review period) review applications that involve land in more than one community district and submit a recommendation to the City Planning Commission.¹⁵⁵ The borough president's requests in their recommendation are solely "consultative" and not legally enforceable.¹⁵⁶

Brewer was the only borough president that supported and recommended the Borough-Based Jails Program.¹⁵⁷ While in her final term,¹⁵⁸ Brewer echoed the de Blasio administration's "vision" for the Borough-Based Jails Program to close Rikers for the sake of criminal justice reform.¹⁵⁹ Brewer further endorsed the plan to "protect the surrounding community from negative impacts," albeit with some conditions.¹⁶⁰ In response to concerns over poor air quality, dust, and excessive noise, Brewer sought more assurances about mitigating the health and environmental impacts of the new mega jail on the senior citizens who live in the Chung Pak affordable housing complex.¹⁶¹ Brewer also cited concerns over the economic hardship that Chung Pak would face as the leaseholder for the complex because 6,300 square feet of their revenue-generating retail space stood to be annexed by the City for the new facility.¹⁶² Brewer's decision effectively affirmed the false dilemma that closing Rikers as a criminal justice priority could only occur by building new mega jails through the Borough-Based Jails Program—and only by doing so in Manhattan Chinatown.

F. City Planning Commission Review

As the next step of this process, the City Planning Commission tends to effectively rubber-stamp the mayor's agenda because the mayor appoints a majority of members.¹⁶³ The 13-member City Planning Commis-

¹⁵⁵ *Step 5: Uniform Land Use Review Procedure (ULURP) Borough President Review*, N.Y.C. DEP'T OF CITY PLAN., <https://perma.cc/NZY3-69ZL> (last visited Mar. 13, 2023).

¹⁵⁶ Matthew Fenton, *Brewer and the Big House*, BROADSHEET (July 12, 2019), <https://perma.cc/UTL5-KGNC>.

¹⁵⁷ David Brand & Noah Goldberg, *Here's Where Things Stand with the City's Jails Plan*, QUEENS DAILY EAGLE (July 16, 2019), <https://perma.cc/L3U7-74TQ>.

¹⁵⁸ Samar Khurshid, *With 5 Candidates Declared, 2021 Manhattan Borough President Race Has Begun*, GOTHAM GAZETTE (Sept. 16, 2020), <https://perma.cc/YQT4-BHAL>.

¹⁵⁹ See N.Y.C. PLAN. COMM'N, *supra* note 73, at 41.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 42.

¹⁶² *Id.* at 41, 214.

¹⁶³ See generally Abigail Savitch-Lew, *NYC's Planning Commission: Rubber Stamps or Checks and Balances?*, CITYLIMITS (Aug. 9, 2017), <https://perma.cc/ZZ58-LHP7>. City Planning Commission members' terms—with the exception of the chair's term—are staggered.

sion must hold a public hearing and either approve, approve with modifications, or disapprove the application within 60 days of the expiration of the borough president's review period.¹⁶⁴ The mayor's seven choices and the borough president and public advocate's six choices for the City Planning Commission have 60 days to vote on the proposal following the borough president's recommendation.¹⁶⁵ In most cases, a simple majority determines the proposal's outcome.¹⁶⁶ If the borough president votes against an application for site selection and has recommended an alternative site pursuant to the Fair Share provisions of the Charter (section 204), then nine affirmative votes are required instead.¹⁶⁷ While the City Planning Commission technically has "the legal authority to stop a proposal . . . , provided that it weighs in within 60 days," it tends not to do so because the mayor appoints the majority of its 13 members,¹⁶⁸ including the chair, who also traditionally has been the head of the DCP.¹⁶⁹ The City Planning Commission then files copies of its decision with the City Council.¹⁷⁰

G. City Council's Deference to the City Council Member Representing the District of the Proposed Project

The City Council engages in a mandatory review in certain actions, including zoning map and text changes pursuant to Charter sections 200 and 201.¹⁷¹ The City Council may vote to take jurisdiction 20 days after the City Planning Commission files its report, electing to review city map changes, zoning special permits, and site selection.¹⁷² The City Council member representing the district of the development proposal has significant influence on the approval of the development project; the City Council "usually follows the lead of the council member in whose district a

N.Y.C. CHARTER § 192(a). Because the ULURP vote occurred in Mayor de Blasio's second term, his appointees from his first and second terms carried the majority vote. See Rich Calder, *City Planning Commission Green-lights Closure Plan for Rikers Island*, N.Y. POST, <https://perma.cc/E4GC-XJMH> (Sept. 3, 2019, 6:31 PM). For some of the City Planning Commission appointments and schedules of their terms, see N.Y.C. Plan. Comm'n, *Appointing Officer and Terms of Office* (2024), <https://perma.cc/Y934-LDY6>.

¹⁶⁴ *Step 5: Uniform Land Use Review Procedure (ULURP) City Planning Commission Review*, N.Y.C. DEP'T OF CITY PLAN., <https://perma.cc/NZY3-69ZL> (last visited Mar. 13, 2023).

¹⁶⁵ CITYLIMITS, *supra* note 135.

¹⁶⁶ *Id.*

¹⁶⁷ N.Y.C. DEP'T OF CITY PLAN., *supra* note 164.

¹⁶⁸ See Fenton, *supra* note 156.

¹⁶⁹ See Abigail Savitch-Lew, *NYC's Planning Commission: Rubber Stamps or Checks and Balances?*, CITYLIMITS (Aug. 9, 2017), <https://perma.cc/WHE5-L747>; see also *id.*

¹⁷⁰ N.Y.C. DEP'T OF CITY PLAN., *supra* note 164.

¹⁷¹ *Step 5: Uniform Land Use Review Procedure (ULURP) City Council Review*, N.Y.C. DEP'T CITY PLAN., <https://perma.cc/5WQR-K8EQ> (last visited Dec. 26, 2022).

¹⁷² *Id.*

project falls.”¹⁷³ While such City Council votes have “the force of law, [they are] difficult to predict.”¹⁷⁴ The City Council has 50 days to accept or reject the proposal.¹⁷⁵

The City Planning Commission report for the Manhattan mega jail proposed a special permit and city map amendment that made the City Council’s review applicable.¹⁷⁶ At the time, there had been speculation that, with a key part of Mayor de Blasio’s criminal justice reform legacy at stake, City Hall would instead lobby other Council members to “support the plan, regardless of how [Council Member Margaret] Chin vote[d],” which would “ignore convention.”¹⁷⁷ Ultimately, Council Member Chin voted for the Chinatown mega jail and provided the de Blasio administration with crucial support for the Borough-Based Jails Program.¹⁷⁸ Chin had reportedly participated in the 1980s protests against the Manhattan Detention Complex towers.¹⁷⁹ Nonetheless, Chin repeated the de Blasio administration’s rationale for the borough-based jails to defend her support for the Manhattan mega jail when a different mayoral administration claimed that the Manhattan Detention Complex she had previously protested against needed to be replaced.¹⁸⁰ Like Borough President Brewer, Chin also reiterated the false dilemma that the only option for “criminal justice reform” was to construct a new mega jail.

Chin was involved in negotiating commitments from the City for the mega jail in the October 18, 2019, Borough-Based Jail Plan Points of Agreement.¹⁸¹ She has suggested in remarks that she believes an important lesson from Chinatown’s struggle with the City in the 1980s over constructing the Manhattan Detention Complex was securing concessions for “needed community faci[l]ities” like the Chung Pak complex.¹⁸² Chin further defended her vote for the mega jail when she “touted” concessions from the City to fund cultural organizations or capital upgrades in the area.¹⁸³ Regardless of Chin’s explanation, her support for the mega jail

¹⁷³ CITYLIMITS, *supra* note 135.

¹⁷⁴ Fenton, *supra* note 156.

¹⁷⁵ CITYLIMITS, *supra* note 135; *id.*

¹⁷⁶ N.Y.C. PLAN. COMM’N, *supra* note 73, at 2-3; *see also* N.Y.C. DEP’T OF CITY PLAN., *supra* note 1790.

¹⁷⁷ Fenton, *supra* note 156.

¹⁷⁸ *See* Carl Glassman, *Council Approves Jail Tower Plan and Downtown Group Will Sue to Stop It*, TRIBECA TRIB (Oct. 20, 2019), <https://perma.cc/P7ZS-69UB>.

¹⁷⁹ Litvak, *supra* note 67.

¹⁸⁰ Carl Glassman, *Chin Staffer Takes Heat from CB1 Committee on Boss’s Jail Vote*, TRIBECA TRIB (Nov. 20, 2019), <https://perma.cc/S88W-CBS3>.

¹⁸¹ *See* Fuleihan Letter, *supra* note 2, at 2.

¹⁸² Carl Glassman, *Anger and Opportunity: Announced Jail Move Sparks Mixed Emotions*, TRIBECA TRIB (Aug. 17, 2018), <https://perma.cc/79KR-BDKZ>; Glassman, *supra* note 180.

¹⁸³ Glassman, *supra* note 180.

affirmed New York City's limited approach to implementing "criminal justice reform."

Chin's justifications did not assuage her constituents. Representing some of the most vehement opposition to the mega jail, one Community Board 1 member said, "Chinatown did not want this building and [Chin] supported it. . . . I feel [like I am] not represented."¹⁸⁴ The committee members also criticized Chin for not protesting that the City's consultations for the jail planning process were with a working group that was invitation-only and closed to the public and press.¹⁸⁵ Despite Chin's justifications, her vote in favor of the Manhattan mega jail felt like a betrayal to her constituents and stands to harm Black and Brown communities across New York City.¹⁸⁶

H. Concessions from the City

Furthermore, the City's concessions to Manhattan Chinatown have not satisfied the local community. On October 17, 2019, the City Council approved several resolutions for the Borough-Based Jails Program.¹⁸⁷ Resolutions 1118-1130 approved the ULURP process, the FEIS, and environmental and social impact findings under CEQR and SEQRA.¹⁸⁸ In return, the City generally promised to invest in criminal justice reform services or programs as well as in "health, housing, transportation, public space, community services, and culture" in Mott Haven, Chinatown, Downtown Brooklyn, and Kew Gardens.¹⁸⁹ For Chinatown specifically, in addition to reducing the height and floor area ratio ("FAR") of the mega

¹⁸⁴ *Id.* (criticizing Chin's affirmative vote for the Borough-Based Jails Program because she "could have protested" the City Council and local community's lack of authority to approve the design of the mega jail under the more improvised design-build construction process).

¹⁸⁵ *See id.*; *New Mega-jail at 125 White St.*, THINK!CHINATOWN, <https://perma.cc/ZJB3-KF5G> (last visited Dec. 10, 2023). A subsequent working group that advised on the land use review leading up to the City Council vote, the "neighborhood advisory council," was also invitation-only and closed to the public and the press. *See infra* notes 257-59.

¹⁸⁶ *See* Open Letter from N.Y.C. Legal Staff Supporting No New Jails (June 17, 2019), <https://perma.cc/G6E5-86B2> (describing the opposition of New York City attorneys, social workers, and public defender administrative staff to the Borough-Based Jails Program based on new jail construction promoting disproportionate rates of criminalization in Black and Brown populations). *See generally* Mack, *supra* note 11 (discussing how harsh policing disproportionately incarcerates Black, Latinx, and immigrant communities).

¹⁸⁷ *Meeting of City Council on 10/17/2019 at 1:30 PM*, N.Y.C. COUNCIL, <https://perma.cc/PR5E-B6A5> (last visited Sept. 23, 2023).

¹⁸⁸ *Id.*; *Neighbors United Below Canal v. Deblasio*, No. 100250/2020, 2020 WL 5632311, at *1, *15-16 (N.Y. Sup. Ct. Sept. 21, 2020) (explaining that SEQRA requires that the development "avoid[] or minimize[] adverse environmental impacts to the maximum extent practicable").

¹⁸⁹ Fuleihan Letter, *supra* note 2, at 1.

jail, the City agreed to some of the community's demands for protecting Chung Pak's economic interests. Importantly, the City agreed to abate the commercial rent that Chung Pak would have collected and paid to the City from the small businesses that the mega jail displaced, reimburse Chung Pak for the commercial tenants' negotiated buyouts, and extend the City's commercial lease with Chung Pak to 2078.¹⁹⁰ The City promised to address the impacts of the mega jail's construction on the health of the Chung Pak seniors, provide some funding for community organizations, conduct air quality and noise monitoring, and build an enclosed outdoor terrace for the Chung Pak seniors for \$1 million.¹⁹¹ It also agreed to establish a construction office to address complaints, where it would implement a traffic study to allow community input regarding the eventual request for proposal ("RFP") for the construction plan,¹⁹² a later stage of the design-build construction process.¹⁹³ Among the agreement's more significant pledges for community investments were \$9.88 million for renovations and upgrades at nearby Columbus Park, which serves as a major recreational area,¹⁹⁴ and \$35 million for the Museum of Chinese in America ("MOCA") pursuant to Community Board 3's demands.¹⁹⁵

However, the City's concessions to Chinatown for the Manhattan mega jail seem woefully inadequate compared to the size of the mega jail and the sacrifices Chinatown's residents and workers will have to make for demolition and construction, which will likely last until 2027. The \$35 million the City agreed to give to the MOCA did not come close to mollifying community members who were still angered by the mega jail's potentially devastating effects like displacing Asian American small businesses.¹⁹⁶

I. Mayor's Review

Mayor Adams has continually made sympathetic statements to Manhattan Chinatown about the mega jail but ultimately has allowed demoli-

¹⁹⁰ *Id.* at 17.

¹⁹¹ *Id.* at 16-17.

¹⁹² *Id.* at 15-16.

¹⁹³ *Design-Build at DDC*, N.Y.C. DEP'T OF DESIGN & CONSTR., <https://perma.cc/KQ8A-UUWE> (last visited Mar. 25, 2023).

¹⁹⁴ Fuleihan Letter, *supra* note 2, at 17; Andrea Pineda-Salgado, *Chinatown Rallies Against Proposed "Mega Jail,"* EPICENTER NYC (Mar. 1, 2022), <https://perma.cc/FR3J-DBV5>.

¹⁹⁵ Fuleihan Letter, *supra* note 2, at 16.

¹⁹⁶ Michaela Seah, *Demonstrators Boycott Chinatown Museum to Protest New Mega Jail*, WASH. SQUARE NEWS (Oct. 4, 2022), <https://perma.cc/NAR8-7VBD>; *see also* Allen, *supra* note 97.

tion and the planned construction to proceed. Generally, the City Council's decision to approve or disapprove a land use application is considered final unless the mayor vetoes the Council action within five days of the vote.¹⁹⁷ In that case, the City Council can subsequently overcome the mayor's veto by a two-thirds vote within ten days of the veto.¹⁹⁸ Mayor Adams suggested that he opposed the mega jail while campaigning, stating at the Asian American Federation's 2021 mayoral candidates forum, "I do not support building the jail [in Chinatown]. I believe we've dumped on the Chinatown community long enough."¹⁹⁹ However, once in office, the mayor's spokesperson confirmed that the mega jail in Chinatown would go ahead, stating, "This administration will always follow the law, and the law says the jails on Rikers Island must close on time. . . . [Therefore,] this work is proceeding."²⁰⁰ Ultimately, Mayor Adams's unreliable support against the mega jail appeared to be politically calculated to appeal to Asian American voters so he could get elected into office.²⁰¹

J. Litigation

In response to the mega jail, community groups and members including Neighbors United Below Canal, its founder Jan Lee, Downtown Community Television Center, Edward J. Cuccia, Betty Lee, and the American Indian Community House, commenced an ultimately unsuccessful proceeding in the New York Supreme Court.²⁰² Under Article 78 of the New York Civil Practice Law and Rules ("C.P.L.R."), the community group petitioners sought review of the City Council's resolutions that approved the rezoning of 124-125 White Street and construction of the new Manhattan mega jail, as well as prior approvals for the Borough-Based Jails Program by several city agencies.²⁰³ The petitioners also alleged that then-

¹⁹⁷ *Step 5: Uniform Land Use Review Procedure (ULURP) Mayoral Review*, N.Y.C. DEP'T OF CITY PLAN. (last visited Dec. 26, 2022), <https://perma.cc/7GQR-KGUF>; see also *CityLimits*, *supra* note 135.

¹⁹⁸ N.Y.C. Dep't of City Plan., *supra* note 196; see also *CityLimits*, *supra* note 135.

¹⁹⁹ Asian Am. Fed'n, *AAF 2021 NYC Mayoral Forum*, YOUTUBE, at 10:14 (Apr. 27, 2021), https://www.youtube.com/watch?v=794jxBj__OA&t=627s.

²⁰⁰ CeFaan Kim, *Community Protests Construction of New Jail in Chinatown*, ABC7NY (Apr. 13, 2022), <https://perma.cc/7E8Y-HFS8>.

²⁰¹ See generally Dashiell Allen, *Protesters Decry Chinatown 'Megajail' as Adams Goes All in on Disruptive Project He Vowed to Oppose*, VILL. SUN (Apr. 12, 2022), <https://perma.cc/J6A5-T7AH> (quoting Howard Huie, a co-founder of Neighbors United Below Canal Street, saying, "Mayor Adams said he would stand by us . . . but he hasn't. . . . He owes this community an explanation for his support for the borough-based jails.").

²⁰² *Neighbors United Below Canal v. Deblasio*, No. 100250/2020, 2020 WL 5632311 (N.Y. Sup. Ct. Sept. 21, 2020).

²⁰³ *Id.*

Mayor de Blasio's administration and the New York City Council violated provisions of SEQRA, CEQR terms, ULURP, and Fair Share Criteria for siting City-sponsored capital projects.²⁰⁴

Specifically, the petitioners alleged that the respondents violated SEQRA and CEQR provisions because they performed the scoping process of the Manhattan mega jail at 80 Centre Street, but did not restart the process at 124-125 White Street upon rejecting the 80 Centre Street location.²⁰⁵ The petitioners also alleged that the DOC and City Council failed to take the required "'hard look' at all the reasonably anticipated environmental impacts, provide the necessary 'reasoned elaboration' of their conclusions" regarding the mega jail site, and identify any alternatives to construction of the mega jail at 124-125 White Street in violation of SEQRA and CEQR.²⁰⁶ Also, the petitioners alleged that bundling the four jails in one ULURP application before the final design of the mega jail was finalized was *ultra vires* (an act beyond authority).²⁰⁷ Finally, the petitioners alleged that the respondents violated the City Charter by locating the mega jail in Chinatown and thereby unduly burdening the neighborhood with more than its fair share of municipal projects.²⁰⁸

In response to the petitioners' Article 78 petition, the state supreme court issued an injunction to halt the construction and physical alteration of 124-125 White Street.²⁰⁹ The supreme court held that the respondents had improperly chosen 124-125 White Street after only conducting the scoping process for 80 Centre Street²¹⁰ and issued premature approvals for the mega jail plan.²¹¹ The supreme court also held that the respondents had also failed to take a "hard look" at the environmental issues, provide a "reasoned elaboration" for their conclusions about the environmental concerns, provide any alternatives to the mega jail, analyze the impacts of alternatives compared to the mega jail,²¹² and properly assess the mega jail's impacts on traffic and car congestion because the plan had not been finalized.²¹³ Further, the supreme court held that the City had approved a post-ULURP review of design and land use issues in violation of ULURP, which was an *ultra vires* act.²¹⁴ Also, the supreme court annulled the City

²⁰⁴ *Id.*

²⁰⁵ *Id.* at *2.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at *3.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at *34.

²¹⁰ *Id.* at *16-17

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* at *17.

²¹⁴ *Id.* at *16-17.

Council's resolutions approving the mega jail's construction.²¹⁵ The notable causes of action that the supreme court did not grant relief for were the petitioners' allegation that situating the mega jail at 124-125 White Street violated the City Charter's Fair Share Criteria and that the respondents violated ULURP by bundling all four of the jails' applications into one.²¹⁶

In spite of the supreme court's ruling, the high threshold to prevail on an Article 78 action combined with a deferential standard of review for determinations based on agencies' expertise, make challenging land use approval decisions over the environmental impacts of development projects a formidable undertaking. Where there is a record that sufficiently shows an agency's reasoning for a determination about environmental impacts, courts defer to the agency.²¹⁷ It is "not the role of the courts to weigh the desirability of any action" but only to enforce the agency's compliance with SEQRA "procedurally and substantively."²¹⁸ Courts review an agency's SEQRA findings according to the standards for administrative proceedings and examine whether a determination was in accordance with or in violation of lawful procedure, or "affected by an error of law or was arbitrary and capricious or an abuse of discretion"²¹⁹ Then courts may examine the record to determine whether the agency "identified the relevant areas of environmental concern, took a 'hard look' at them, and made a 'reasoned elaboration' of the basis for its determination."²²⁰ Under SEQRA, "[n]ot every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before a[n] FEIS will satisfy the substantive requirements."²²¹ Furthermore, the legislature granted agencies in SEQRA "considerable latitude in evaluating environmental effects and choosing among alternatives."²²² Ultimately, the legal standard that allows courts to evaluate

²¹⁵ *Id.* at *4.

²¹⁶ *Id.* at *16-17.

²¹⁷ See *Chem. Specialties Mfrs. Ass'n v. Jorling*, 85 N.Y.2d 382, 395-97 (1995) (holding against the challengers to an administrative rule because the record of 44 scientific studies, empirical data, and expert affidavits that supported the Department of Environmental Conservation's determination was sufficient under SEQRA).

²¹⁸ *Jackson v. N.Y. State Urb. Dev. Corp.*, 67 N.Y.2d 400, 416 (1986); see also *Friends of P.S. 163, Inc. v. Jewish Home Lifecare*, 30 N.Y.3d 416, 430 (2017).

²¹⁹ N.Y. C.P.L.R. § 7803(3) (McKINNEY 2003).

²²⁰ See *Jackson*, 67 N.Y.2d at 417; *Friends of P.S. 163, Inc.*, 30 N.Y.3d at 430.

²²¹ *Jackson*, 67 N.Y.2d at 417 (quoting *Aldrich v. Pattison*, 486 N.Y.S.2d 23, 29 (N.Y. App. Div. 1986)).

²²² *Id.*

compliance with SEQRA is predisposed to disregard the realities of environmental impacts of development projects on local communities.²²³

Manhattan Chinatown is another community that will endure the environmental impacts of a development project under such a deferential standard. On appeal, New York’s First Department of the Appellate Division unanimously reversed the supreme court’s decision on the law.²²⁴ The First Department held that the scoping process was not arbitrary and capricious, an error of law, or in violation of lawful procedure because the City’s scoping process for 80 Centre Street was in strict compliance with the SEQRA process.²²⁵ The First Department also held that the City’s environmental review “took the requisite hard look at impacts on public health, traffic, and parking, and made a reasoned elaboration of the basis for [the City’s] determination.”²²⁶ The Court of Appeals denied leave to appeal.²²⁷ The City prevailed in the Article 78 proceeding under this legal standard that allows a cursory environmental impact analysis.

V. CRITIQUES OF THE BOROUGH-BASED JAIL PROGRAM

In advancing the mega jail, Mayor de Blasio repeated generations-old rhetoric that physical improvements constitute effective jail reform. History, however, has shown that construction of new jails does not provide lasting so-called “humane” conditions for detainees. In the mid-twentieth century, Rikers represented the most “modern, humane, [and] rehabilitative” jail in the United States.²²⁸ Similarly, the goal of the architects of Chicago’s Metropolitan Correctional Center in the 1970s was to design a “more humane” jail pairing cutting-edge design principles with federal guidance for prisons.²²⁹ Nonetheless, Chicago’s Metropolitan Correctional Center’s five-inch-wide, beveled-out floor-to-ceiling windows designed to let in as much sunlight as possible have not counterbal-

²²³ See, e.g., *Jackson*, 67 N.Y.2d at 417 (approving the development project involving high-rise office towers, hotels, theaters, a shopping center, and subway renovation in Times Square even though the project likely would displace elderly residents and result in harmful air pollution and traffic congestion); *Friends of P.S. 163, Inc.*, 30 N.Y.3d at 430 (approving the application to construct a 20-story nursing home facility next to a school despite the potential impacts of lead dust and noise).

²²⁴ *Neighbors United Below Canal v. DeBlasio*, 146 N.Y.S.3d 78 (N.Y. App. Div. 2021).

²²⁵ *Id.* at 80.

²²⁶ *Id.* (citations and internal quotations omitted).

²²⁷ *Neighbors United Below Canal v. DeBlasio*, 37 N.Y.3d 914 (2021).

²²⁸ Osha Oneeka Daya Brown et al., *\$11 Billion for What?! Incarcerated Organizers with No New Jails NYC Explain How to Shut Down Rikers Without Building New Jails*, 23 CUNY L. REV. F. 1, 10 (2020).

²²⁹ Chris Morris, *Chicago Modern: More than Mies*, CHI. ARCHITECTURE CTR. (Mar. 19, 2012), <https://perma.cc/FH4J-FABR>.

anced the jail's overcrowded and allegedly corrupt conditions where detainees are incarcerated long-term.²³⁰ In the 1980s, at the very location of the planned Manhattan mega jail, New York City remodeled what was then the Manhattan House of Detention, or "the Tombs," because the conditions violated detainees' constitutional rights. The *New York Times* stated that the \$42 million remodeling (equivalent to \$118.5 million in 2022) made the Tombs "one of the most humane and efficient jails anywhere."²³¹ Now, proponents of the Manhattan mega jail once again ironically claim that a new jailscraper is necessary to replace the Manhattan Detention Complex to provide humane conditions for detainees.²³²

A. *The mega jail does not represent effective criminal justice reform and is an inefficient use of taxpayer money.*



Photo: Signs read "Free Them All: Stop the Spread. Protect All Communities Vulnerable to COVID-19" and "Chinatown Needs Housing Not Jail" in the window of vacated retail space near the demolition and construction site for the mega jail. September 2022.

²³⁰ See *The MCC: Chicago's Jailhouse Skyscraper*, 99% INVISIBLE (May 20, 2011), <https://perma.cc/F5RR-C42L>; Annie Sweeney et al., *MCC Can't Escape Bad Reputation*, CHI. TRIB. (Dec. 12, 2012, 12:00 AM), <https://perma.cc/CM7N-VB56> (describing how, although intended for pre-trial detention, the jail confines detainees for up to five or six years and has complaints of guards committing crimes).

²³¹ Philip Shenon, *Tombs to Reopen with a New Look*, N.Y. TIMES, Oct. 17, 1983, at A1.

²³² N.Y.C. PLAN. COMM'N, *supra* note 73, at 6 (advocating for new jails because the City's existing jails "are limited in capacity and inefficient in design, as many of them date back to the 1950s, 1960s, 1970s, and 1980s and have not been renovated since the early 1990s").

The previous examples of new jail construction or remodeling at Rikers, the Tombs, and the Metropolitan Correctional Center show that continually building and renovating jails is not the solution to treating detainees more humanely. Community Board 3 member Karlin Chan described using the Borough-Based Jail Program as a way to address the inhumane treatment of detainees at Rikers as “basically . . . transfer[ring] the problem into newer buildings.”²³³ No New Jails, a network of campaigns that opposes jail construction and supports decarceration and abolition more broadly, emphasized at the City Planning Commission’s public hearing for the borough-based jails that “if new jails [are] built, they [will] be filled.”²³⁴ The City’s emphasis on needing new facilities to hold more programming for detainees²³⁵ than is possible at Rikers underscores the reality that detention centers hold people awaiting trial for years.²³⁶

Despite the City’s claims of the importance of situating the borough-based jails more conveniently, pretrial detention is disruptive and correlated with worse outcomes for detainees. No New Jails has advocated against the Borough-Based Jails Program because jails “isolat[e], banish[], and confine[]” detainees, regardless of whether the facilities are centrally located.²³⁷ A 2017 study in New York City suggested that pretrial detention tends to have harsher effects on people detained for minor charges because they are more likely to plead guilty to avoid even more jail time.²³⁸ Ultimately, pretrial detention disrupts detainees’ lives, education, and careers.²³⁹

Given the issues that pretrial detention tends to cause and the worse outcomes for those detained, constructing the Manhattan mega jail is an inefficient use of taxpayer money. The mega jail’s construction does not address the systemic causes of crime that disproportionately harm Black and Brown communities. The over \$10 billion of costs associated with constructing all the borough-based jails, plus additional operational

²³³ Ishak, *supra* note 1.

²³⁴ N.Y.C. PLAN. COMM’N, *supra* note 73, at 49; see also *Building a World Without Jails*, NO NEW JAILS NETWORK, <https://perma.cc/VS2U-GDVK> (last visited Mar. 14, 2023).

²³⁵ N.Y.C. OFF. OF THE MAYOR, *supra* note 4, at 39-40.

²³⁶ See generally Nazish Dholakia, *The Difference between Jail and Prison*, VERA INST. OF JUST. (Feb. 21, 2023), <https://perma.cc/8GYQ-95JC> (describing how most people in jail have been detained pre-trial because they cannot afford to pay their bail and may be incarcerated for years as a result); see e.g., Spivack, *supra* note 8; Sweeney et al., *supra* note 231.

²³⁷ Brown et. al., *supra* note 22826, at 9.

²³⁸ See LÉON DIGARD & ELIZABETH SWAVOLA, VERA INST. OF JUST., JUSTICE DENIED: THE HARMFUL AND LASTING EFFECTS OF PRETRIAL DETENTION 5 (2019), <https://perma.cc/BCS9-KWDZ> (citing Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments*, 60 J.L. & ECON. 529 (2017)).

²³⁹ *Id.*

costs,²⁴⁰ or even the over \$2 billion cost of the Manhattan mega jail alone,²⁴¹ could instead fund long-term investments to address inadequate housing, unemployment, education, and healthcare in the city.²⁴² Furthermore, the City's claim that transporting detainees from Rikers to court is an inefficient use of financial resources²⁴³ simply does not add up when the cost of constructing four new jails to house a historically small jail population is approximately \$1.5 to over \$2 billion per jail. Investing in Black, Indigenous, People of Color ("BIPOC") communities and alleviating the crises in housing, unemployment, education, and healthcare that tend to lead to criminalization would demonstrate true commitment to criminal justice reform and racial justice.

B. The City did not meaningfully engage with the Manhattan Chinatown community.

The City sought to force through the approval of the Manhattan mega jail at 124-125 White Street and falsely framed the approval as the only possible way to effectuate criminal and racial justice reform. Historically, Manhattan Chinatown has opposed the carceral system²⁴⁴ and many in the Chinatown community supported closing Rikers.²⁴⁵ For example, the Chinese-American Planning Council ("CPC") supported closing Rikers but called on Mayor de Blasio to stop the proposal for the Manhattan borough-based jail from proceeding until criminal justice advocates and

²⁴⁰ See Brown et al., *supra* note 228, at 3 (citing the initial estimates that the borough-based jails would cost approximately \$11 billion); Allen, *supra* note 97.

²⁴¹ N.Y.C. Dep't of Design & Constr., *supra* note 14; N.Y.C. DEP'T OF DESIGN & CONSTR., *supra* note 14.

²⁴² See Vincent Schiraldi, *I Spent Over 40 Years Working in Corrections. I Wasn't Ready for Rikers.*, THE MARSHALL PROJECT (Oct. 28, 2022), <https://perma.cc/2M69-EUXM>.

²⁴³ N.Y.C. PLAN. COMM'N, *supra* note 73, at 5.

²⁴⁴ See, e.g., Ming Lin & Alexandra Tatarsky, *Corky Lee 'Was Chinatown to Me,'* VULTURE (Feb. 3, 2021), <https://perma.cc/U6SF-9TJ7> (discussing community legend Corky Lee's legacy photographing Asian Americans' activism in New York City, including protests of jail construction and 2,500 Chinatown residents who marched to City Hall to protest police brutality in 1975).

²⁴⁵ See Letter from Chinatown Nonprofit Leaders to Bill de Blasio, N.Y.C. Mayor (Sept. 27, 2018), <https://perma.cc/2Z58-U2EA> (showing the sign-ons of local Chinatown nonprofits including Asian American Federation, Asian Americans for Equality, Chinese American Planning Council ("CPC"), Chinatown Business Improvement District, CMP, Chinatown Partnership, Chinese Progressive Association, Chung Pak Local Development Corporation, Hamilton-Madison House, Immigrants Social Services Inc., OAC-NY, Rotary Club of Chinatown, and Two Bridges Neighborhood Council); see also Pineda-Salgado, *supra* note 194.

community residents and leaders could provide meaningful input.²⁴⁶ Welcome to Chinatown's co-founder, Vic Lee, also expressed concern that the City was "furthering [almost \$2 billion] into mass incarceration, all while . . . destroying [the Chinatown] community."²⁴⁷ Even Charles Lai, as the executive director of Chung Pak, the organization that the mega jail stands to most harshly impact, denounced the zero-sum framework that suggests that opposing the Manhattan mega jail means opposing the humane treatment of incarcerated Black and Latinx people. Demanding that "all our communities [be] made whole and safe," Lai spoke out against "poor working class and people of color communities . . . be[ing] pitted against each other" and recognized that the Chinatown community, like other BIPOC communities, is "fighting for fairness, for rights, for self-determination, and for [its] voices to be heard."²⁴⁸ By imposing a false dilemma of locating the mega jail in Manhattan Chinatown or not achieving criminal justice for Black and Brown communities, first Mayor de Blasio and now Mayor Adams have missed an opportunity to create a powerful multiracial coalition of communities to support systemic criminal justice reform.²⁴⁹

The mega jail symbolizes the rage and despair of the Manhattan Chinatown community over New York City politicians, who are largely outsiders to Chinatown, imposing land use decisions on its neighborhood. The jail developers' vision is for the mega jail to be "multigenerational."²⁵⁰ Manhattan Community Board 1, Walker Street Block Association, Lin Sing Association, and Neighbors United Below Canal all expressed concern that the mega jail would have negative effects on nearby Chinatown residents, particularly the seniors who live at the Chung Pak development.²⁵¹ A daughter of two local business owners expressed:

²⁴⁶ CHINESE-AM. PLAN. COUNCIL, TESTIMONY TO THE NEW YORK CITY DEPARTMENT OF CORRECTIONS AND THE MAYOR'S OFFICE OF ENVIRONMENTAL REVIEW SCOPING MEETING: 18DOC001Y 1 (2018) (explaining that CPC is one such community leader as "the largest Asian American social service organization in the U.S.").

²⁴⁷ Ishak, *supra* note 1.

²⁴⁸ Jan Lee, *April 23rd 2019 Charles Lai, Exec. Dir of Chung Pak Senior Residence Speaking Before CB1 Full Board*, YOUTUBE (May 4, 2019), <https://www.youtube.com/watch?v=vugzrLuLW0k&t=12s>.

²⁴⁹ See generally Mack, *supra* note 11 (explaining that the carceral state "pit[s] poor and working people of all races and immigration status . . . against each [other] as competitors for scarce resources, increasingly through the language and ideology of 'criminality,' rather than [bringing them together] as necessary allies in potential mass movements for social change").

²⁵⁰ Nabil Hassein, Opinion, *Council Must Not Hide Behind 'Member Deference' on Borough Jails*, CITYLIMITS (Aug. 28, 2019), <https://perma.cc/Z27H-8SMB>.

²⁵¹ N.Y.C. PLAN. COMM'N, *supra* note 73, at 14, 50 (stating that the Chung Pak development has an affordable housing residence for seniors with 88 units and the Chung Pak Day Care Center).

It feels like the city does not care about us because why would they build a jail literally down the block from a park, near a daycare center, near establishments that've been out here for a long time? . . . Chinatown is not known for the world's tallest jail, but that's what [the City is] planning to do.²⁵²

Landscape architect and Community Board 1 member Laura Starr called the City's land use approval process of the mega jail in a "tourist and residential and civic center" in Chinatown "a travesty."²⁵³ The City's imposition of a new mega jail towering over Chinatown is a bitter manifestation of a sentiment among Asian Americans that elected representatives do not care about their concerns.

C. The City used discretion-based review to expedite approval of the Manhattan mega jail in Chinatown.

Despite the fact that the mega jail entails a gigantic amount of demolition and construction with many potential negative impacts on Manhattan Chinatown, the de Blasio administration relied on the City's discretion to expedite approval of the Manhattan mega jail. The City's efforts reflected Mayor de Blasio's priority of delivering criminal justice reform without investing in the most impacted communities. The City bundled all the borough-based jail ULURP applications into one—something community organizations had protested²⁵⁴—likely to expedite all the approvals.²⁵⁵ The DOC only held "six invitation-only 'neighborhood advisory council' meetings" that were not open to the public before issuing the DEIS for construction of all four jails on March 22, 2019.²⁵⁶ The City shortened the public comment period for the DEIS by over one month so that it ran from March 22, 2019 to July 22, 2019 and moved up the public hearing to July 10, 2019.²⁵⁷ Following the neighborhood advisory council meetings, the City convened the Jails, Justice and Communities Working Group, which similarly was invitation-only.²⁵⁸ President and CEO of CPC Wayne Ho opposed the rushed approval process, saying, "The Mayor has proposed a community jails plan. But without the community involved,

²⁵² Pineda-Salgado, *supra* note 194.

²⁵³ Glassman, *supra* note 180.

²⁵⁴ See, e.g., *CPC Demands Mayor Stop the Clock on New Chinatown Jail, Invest in Communities*, CHINESE-AM. PLAN. COUNCIL (Sept. 27, 2018), <https://perma.cc/85AZ-EVKR>.

²⁵⁵ Cmty. Bd. 3 Memorandum, *supra* note 142.

²⁵⁶ *Neighbors United Below Canal v. Deblasio*, No. 100250/2020, 2020 WL 5632311, at *10 (N.Y. Sup. Ct. Sept. 21, 2020).

²⁵⁷ *Id.* at *11.

²⁵⁸ See Glassman, *supra* note 180.

then he only has a plan for more jails.”²⁵⁹ The City’s actions suggested the de Blasio administration’s intent to accelerate the Manhattan mega jail’s approval and insulate his administration from local community opposition.

ii. Environmental impacts will harm public health.

The City also used its discretion to assert that mitigations would cancel out the likely harmful health and environmental effects on Chinatown residents and workers. The FEIS’s minimization of harmful health and environmental effects, after mitigations, defies common sense. The FEIS implies that a project demolishing both the Manhattan Detention Complex towers and constructing an even taller and larger jail would not pose even moderate detrimental health and environmental effects.²⁶⁰ For example, digging for the foundation of the mega jail caused community media center DCTV’s basement to flood next door.²⁶¹ Also, demolition alone will release known toxins, such as asbestos, into the air.²⁶² The City’s conclusion that mitigations will prevent almost all detrimental health effects of a massive, five-year-minimum development project makes the FEIS appear to be rubber-stamped.

The negative health impacts of particulate matter are a grave concern that the FEIS also addressed inadequately. Particulate matter is the “mixture of . . . extremely small particles and liquid droplets suspended in the air.”²⁶³ Particulate matter is “invisible” and can originate from “exhaust from diesel-powered construction equipment”²⁶⁴ as well as “combustion, power plant emissions . . . and construction.”²⁶⁵ It can “penetrate deep

²⁵⁹ CHINESE-AM. PLAN. COUNCIL, *supra* note 254.

²⁶⁰ N.Y.C. DEP’T OF CORR., *supra* note 111 at S-61 to S-67 (2019) (assessing that there would not be significant adverse impact to air quality and public health, and the only “unavoidable adverse impacts” would be on architectural resources, transportation, and pedestrians (emphasis omitted)); see Carl Glassman, *Opponents Sue to Halt Chinatown Jail, Claiming City’s Review Failures*, TRIBECA TRIB (Feb. 18, 2020), <https://perma.cc/78P9-JBJQ> (stating that the City’s FEIS “doesn’t provide ‘an accurate picture’ of the health impacts of long-term demolition and construction . . . [which] could be ‘an exceptionally detrimental disturbance to residents’ health and well-being for years to come’” (quoting Dr. Judith Zelikoff, professor of environmental medicine at New York University Grossman School of Medicine)).

²⁶¹ DEMOCRACY NOW!, *supra* note 10.

²⁶² Pineda-Salgado, *supra* note 194; see also N.Y.C. DEP’T OF CORR., *supra* note 111, at S-57.

²⁶³ Letter from Simona C. Kwon, Dir., N.Y. Univ. Ctr. for the Study of Asian Am. Health, to Gale Brewer, Manhattan Borough President (June 27, 2019) [hereinafter CSAAH Letter].

²⁶⁴ *Id.*

²⁶⁵ YI-LING TAN ET AL., N.Y. UNIV. CTR. FOR THE STUDY OF ASIAN AM. HEALTH, THE LONG-TERM IMPACT OF CONSTRUCTION ON THE HEALTH OF OLDER ADULTS IN NEW YORK CITY’S CHINATOWN 8 (2019).

into the alveoli in the lungs”²⁶⁶ and “adversely affect[] both respiratory and cardiovascular system functions.”²⁶⁷ Construction site particulate matter can “stay in the air for hours or weeks,” so the ULURP application’s 400-foot radius is likely insufficient to accurately measure the impact of the particulate matter from the demolition and construction of the mega jail.²⁶⁸ Nonetheless, the City presented its assessment as if mitigations would almost completely cancel out the mega jail’s likely harmful public health impacts.²⁶⁹

Exposure to such toxic particulate matter has been associated with acute and long-term health conditions. The potential effects include “cardiovascular disease, lung cancer, increased blood pressure, [and] the aggravation of respiratory diseases[.]”²⁷⁰ Local Chinatown residents and scholars also have shared their concerns that the mega jail’s construction will make the nearby parks inaccessible for their children to play in²⁷¹ and for seniors to use.²⁷² The City’s environmental reviews also failed to account for Chung Pak’s seniors, including “105 residents ranging in age from 62 to 105 years old,”²⁷³ and consider that concentrations of particulate matter “deemed acceptable for the general population” may not be safe for the elderly.²⁷⁴ The City’s failure to account for the danger of particulate matter, especially for the Chung Pak seniors, suggests a lack of concern for the seniors’ health living next to a massive construction site for at least five years. More broadly, the City’s assessment shows the flexibility the City has to strategically frame data to obtain desired outcomes.

The impacts of particulate matter should have also been of great concern to the City because Chinatown was within the toxic September 11 “Exposure Zone.”²⁷⁵ Health officials have found that individuals who lived or worked within the zone or responded to the disaster “are still developing symptoms from exposure.”²⁷⁶ The parents of this article’s author

²⁶⁶ CSAAH Letter, *supra* note 263.

²⁶⁷ TAN ET AL., *supra* note 265, at 8.

²⁶⁸ *Id.* at 19.

²⁶⁹ See N.Y.C. DEP’T OF CORR., *supra* note 111, at S-62 to S-63.

²⁷⁰ CSAAH Letter, *supra* note 263.

²⁷¹ See Epicenter NYC, *How the Worlds [sic] Tallest “Megajail” Could Change Chinatown Forever*, OMNY STUDIO: EPICENTER NYC (Mar. 16, 2022, 5:00 AM), <https://omny.fm/shows/epicenter-nyc/the-worlds-tallest-megajail-could-change-chinatown>; see also N.Y.C. PLAN. COMM’N, *supra* note 73, at 14 (describing how the public parks in the surrounding neighborhood include Columbus Park, Collect Pond Park, and Thomas Paine Park).

²⁷² See CSAAH Letter, *supra* note 263.

²⁷³ Cmty. Bd. 3 Memorandum, *supra* note 142.

²⁷⁴ CSAAH Letter, *supra* note 263.

²⁷⁵ *NYC Map Of Exposure Zone*, SEPTEMBER 11TH VICTIM COMP. FUND, <https://perma.cc/UKA2-SHBV> (last visited Aug. 11, 2023).

²⁷⁶ *Neighbors United Below Canal v. Deblasio*, No. 100250/2020, 2020 WL 5632311, at *27 (N.Y. Sup. Ct. Sept. 21, 2020).

worked in Chinatown for decades and reopened their office only one month after September 11th. Both developed suspected environmental, non-hereditary health issues years later. In spite of this context, the deferential legal standard of review for development projects' environmental impacts has allowed a cursory review of the actual impacts of the demolition for and construction of the Manhattan jailscaper. The five-year-minimum construction period poses a grave health risk for Chinatown residents, workers, and the significant elderly Asian population. The ULURP process failed to accurately demonstrate the likely harmful health and environmental impacts from a construction project of the Manhattan mega jail's gargantuan scale.

ii. Displacement of Local Businesses



Photo: A closed restaurant where the mega jail will be. September 2022.

The City sought to expedite and force through the approval of the mega jail using discretion to dismiss the seemingly obvious harms that demolishing the Manhattan Detention Complex and constructing the mega jail will likely have on local businesses. First, the City's mega jail plan showed little concern for the livelihood of Asian American small businesses. While the City claimed that the loss of employment for 28 workers in Chinatown would not "alter the socioeconomic condition of [Chinatown],"²⁷⁷ such an impact on at least dozens of workers in a historic neighborhood of color is a racial and economic justice issue. The City

²⁷⁷ N.Y.C. DEP'T OF CORR., *supra* note 111, at S-52.

also acquired Walker-Street-Chung Pak Local Development Corporation's ("LDC") leasehold interest of approximately 6,300 square feet of retail space.²⁷⁸ Although Chung Pak compensated the small businesses (and the City reimbursed Chung Pak),²⁷⁹ the City's acquisition has displaced multiple long-operating Asian restaurants, such as Malaysian restaurant Jaya 888.²⁸⁰ Formerly located at 90 Baxter Street, the restaurant was forced to close and has since been surrounded by wire fencing. A City official informed Jaya 888's manager about the plan to demolish the restaurant's space for the mega jail and then failed to communicate with the restaurant for over a year.²⁸¹



Photo: Baxter Street, where multiple Asian restaurants had operated, including Jaya 888. Much of the sidewalk has been fenced off. September 2022.

Even for small businesses that did not get displaced, the demolition and construction for the mega jail will likely impair nearby small businesses' ability to operate. For example, Nha Trang One's owner, Andy Ha, said that he "expect[ed] to see an immediate decline in business" once construction of the mega jail started because the restaurant is located

²⁷⁸ N.Y.C. PLAN. COMM'N, *supra* note 73, at 2.

²⁷⁹ Fuleihan Letter, *supra* note 2, at 17.

²⁸⁰ See Aria Young, *Locals Call to Stop Chinatown Mega Jail Plan*, NYU LOCAL (Mar. 12, 2022), <https://perma.cc/LD4H-WEK9>; Rachel Holliday Smith, *As Planned New Jail Looms, Baxter Street Braces for Impact*, THE CITY (Sept. 3, 2019, 4:00 AM), <https://perma.cc/K8UD-R4GL>.

²⁸¹ Smith, *supra* note 280.

across the street from the mega jail site.²⁸² Even before the mega jail proposal, the restaurant's business had been "down 50%" as of early 2022 after COVID.²⁸³ The owner of Sun's Organic Garden, a four-minute walk from the mega jail, predicts that "[t]he footprint of Chinatown will shrink, and that will impact the rest of the community because there will be . . . [fewer] mom and pop stores" and fewer "attractive things for people who want to come."²⁸⁴ The mega jail's construction likely will cause "smoke, dust, and loud noises" and cause customers to avoid nearby businesses. The anticipated environmental effects of construction will likely harm the health of those working for businesses located near the mega jail, as well as further burden the businesses' ability to operate.

CONCLUSION



Photo: Updated progress on the mega jail site in October 2023 seen from Baxter Street. The scope of demolition and construction work cannot fit in the cellphone camera shot taken from across the street.

The City successfully forced through the approval of an astonishingly expensive \$2 billion plan to demolish the Manhattan Detention Complex's towers and build a new jailscraper. From the beginning, the ULURP approval process limited community participation and lacked transparency. Despite the City's emphasis on the need to close Rikers as a matter of racial justice and criminal justice reform for Black and Latinx

²⁸² Young, *supra* note 280.

²⁸³ *Id.*

²⁸⁴ Pineda-Salgado, *supra* note 194.

communities, the Borough-Based Jails Program fails to address the systemic roots of incarceration and pits the false dilemma of closing Rikers against preserving Manhattan Chinatown. In doing so, the program disregards the local Manhattan Chinatown community's feedback and threatens to crush the authentic existence of Chinatown as a refuge for Asian Americans to live, work, and share racial solidarity.

Every elected local political representative for Manhattan Chinatown who had a voice in the land use approval process ultimately supported the Borough-Based Jail Program and let down their constituents, who emphatically opposed the Chinatown mega jail. Each politician's reiteration of the de Blasio administration's justification for the Borough-Based Jails Program seemed to affirm their lack of concern for Asian Americans' priorities. This lack of concern has had an even harsher effect after Asian Americans have spent years struggling to recover from Chinatown being in the toxic September 11 Exposure Zone, operating small businesses in Chinatown during the early years of the COVID-19 pandemic, and experiencing ensuing anti-Asian racism and violence. Local officials' positions supporting the mega jail show how consequential local elections are.

The City's failure to accurately assess the potentially harmful impacts that the mega jail will inflict on Manhattan Chinatown has underscored the City's essentially absolute discretion in making land use decisions. Throughout this process, the City's ability to weigh factors against each other to cancel out the seemingly obvious harms that constructing a mega jail in Manhattan's Chinatown will cause has arguably obscured the true impact of the Borough-Based Jail Program. Ultimately, the City's claim that there will not be significant impacts on a historic neighborhood or on the health of Chinatown's residents and workers from the demolition and construction required for a project of such massive scale requires New Yorkers to suspend their disbelief.