

Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

**FROM: TONI J. TABER, CMC
CITY CLERK**

SUBJECT: SEE BELOW

DATE: AUGUST 18, 2022

**SUBJECT: EXTENDING MUNICIPAL VOTING ELIGIBILITY TO ALL CITY
RESIDENTS**

What is Non-Citizen Voting?

It's the extension of voting rights to residents who have not yet achieved citizenship. Non-citizen voting is also known as "immigrant voting," "resident voting," and "local citizenship." While Federal law states that it is unlawful for a noncitizen to vote in federal elections (*Illegal immigration reform and immigrant responsibility act of 1996*), federal law does not address citizenship and voting in state or local elections.

Why Consider Non-Citizen Voting?

More than 25 million noncitizens reside in the United States as of 2017 including "12.3 million permanent residents and 2.2 million temporary residents in the country with legal permission and 10.5 million living in the country without legal permission." (*Laws permitting noncitizens to vote in the United States*). In the City of San José, 40.5% of residents are immigrants. Approximately 47% of those residents are non-citizens. (*U.S. Census Bureau quickfacts: San José City, California 2022*)

With the process to become a legal citizen taking eight to ten years, this leaves many tax-paying residents unable to vote in local, state, and federal elections. From the inception of the United States until 1926, non-citizen immigrants were eligible to vote in up to forty states and federal territories. Encouraging immigrants to vote was seen as nurturing attachments to their adopted communities. (Hayduk 3)

Benjamin Franklin stated that those who have no voice in electing representatives are essentially enslaved to those who can vote. Non-citizen immigrants live under the same laws and policies as citizens but are unable to vote for representatives who make those policies that affect their lives, and on average "pay more in taxes than they receive in public expenditures." (Hayduk 2-3)

Why **Not** Consider Non-Citizen Voting?

There are significant arguments that non-citizen voting violates State constitutions. On July 29, the San Francisco Superior Court struck down a provision that allowed specified non-citizen residents in San Francisco to vote in local school board elections on the grounds that it violated the State constitution stating, “Transcendent law of California, the Constitution ... reserves the right to vote to a United States citizen, contrary to (the) San Francisco ordinance.” (EdSource) Additionally, in June 2022, a New York State Supreme Court Justice struck down New York City’s non-citizen voting measure stating it conflicted with the New York State Constitution. (Mays)

In an editorial addressing the New York City non-citizen resident voting proposal, the New York Post editorial board wrote that non-citizens should take the oath of allegiance to renounce all “fidelity to any foreign prince, potentate, state, or sovereignty” and swear to “support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic” before being allowed to vote. (*New York Post*)

Ross Baker wrote in 2018, that remaining a resident alien instead of pursuing citizenship benefits immigrants due to general assistance programs that pays some immigrants \$800 per month. He claims the right to vote incentivizes resident aliens to pursue citizenship. (Baker)

Another consideration would be cost which is detailed more below.

Who Is Currently Using Non-Citizen Voting?

As of December 2021, at least 15 municipalities in the United States allowed non-citizens to vote in some or all local elections. For purposes of comparison, the population of San José as of July 2021 is estimated at 1,014,545. (*U.S. Census Bureau quickfacts: San José City, California 2022*)

State	City	Population	Requirement
NY	New York City	20,000,000	legal residents, law struck down by New York trial court in June 2022 (Mays)
CA	City and County of San Francisco	874,000	parent with child in school district, law struck by San Francisco Superior Court in July 2022 (EdSource)
MD	Somerset	24,620	"Every person who (1) is at least eighteen years of age, (2) has resided within the corporate limits of the town for fourteen days next preceding any election, and (3) is registered in accordance with the provisions of this Charter, shall be a qualified voter of the town. Every qualified voter of the town shall be entitled to vote at any or all town elections."
MD	Hyattsville	21,187	Resident

MD	Takoma Park	17,629	City residents who are not citizens of the United States can register to vote in Takoma Park elections by completing the Takoma Park Voter Registration Application."
MD	Mount Rainier	8,333	resident for 30 days or more at the time of a local election, is at least 18 years old, has not been convicted of a felony offense or of buying and selling votes, and is not under mental guardianship may register to vote
VT	Montpelier	8,074	legal residents
VT	Winooski	7,997	legal residents
MD	Riverdale park	7,180	(a) Every resident of the town who (1) has the Town of Riverdale Park as his or her primary residence, (2) is at least sixteen (16) years of age, (3) has resided within the corporate limits of the town for at least forty-five (45) days immediately preceding any non-runoff town election, (4) does not claim the right to vote elsewhere in the United States, (5) has not been found by a court to be unable to communicate a desire to vote, and (6) is registered to vote in accordance with the provisions of § 503 of this charter shall be a qualified voter of the Town."
MD	Cheverley	6,173	30 day residency before election & not convicted of a crime
MD	Garret Park	1,053	resident
MD	Martin's Addition	993	resident or property owner
MD	Chevy Chase Section 3	802	resident
MD	Glen Echo	270	lawful resident
MD	Barnseville	144	6-month residency

To Whom Would It Apply?

The City would need to determine what is the criteria of non-citizen voter to extend voting rights to. New York extended voting rights to immigrants who are legal residents. Smaller jurisdictions extend to all residents over the age of 18.

Like citizen voters, there would need to be some registry for non-citizen voters. The City would need to work with the Registrar of Voters to determine if they have the capability of managing a separate voter database or determine if the City of San José will own the software and process the registrations. Preliminary discussions with the Registrar of Voters (ROV) indicated they may be able to provide this service.

How Would Elections Be Conducted and What Would the Cost Be?

There are many decisions that need to be made that will affect the estimated cost of implementing immigrant voting. These decisions could change the estimate by millions of dollars. For example, if the City should need to run its own a standalone election, an entire elections department to handle, among other things, voter registration, ballot preparation, and ballot counting including software and machinery would need to be estimated. However, for the purpose of this estimate, some assumptions will be made. These assumptions are based on the simplest path forward:

- 1) Resident Aliens will be allowed to vote
- 2) Non-citizens will be required to register
- 3) Citizen voters will receive their normal ballot with all consolidated ballot items
- 4) A separate ballot will be sent to non-citizens
- 5) The ROV will be able to provide the services for such an election

The City of New York estimated an additional \$4 million in their FY23-24 election cost forecast to handle an election with an estimated additional 900,000 non-citizen voters. This cost does not include outreach or staff time. Additionally, the City of New York manages their own election, so a separate ballot will not need to be produced. San Francisco spent just over \$300,000 on registration and outreach for non-citizen voting in school board races. For these efforts, 49 people registered for the first election. (Ross) As of February 2022, 156 non-citizens were registered to vote in school board elections. *(Non-citizen voting rights gain traction as immigrants vote in SF Unified School Board recall 2022)*

The invoice received by the City of San José for the June 2022 election totaled \$2,258,568 which includes only a portion of the full printing cost as the City shares the burden of printing costs with other municipalities also on the ballot. The City would have no shared printing costs for the non-citizen ballots. The entire cost would be borne by the City.

To estimate the costs, we need to include ballot design and printing, mailing, staff time, outreach, translations, and postage. Approximating the number of possible non-citizen voters as 97,847* the base charge could be \$260,274. We currently pay a shared printing cost, but we would bear the entire design and printing cost of this ballot. Estimating a ten-page ballot, the cost would be roughly estimated as \$1,500,000. Software and registration verification can be estimated at \$1,000,000 basing these estimates on ¼ the cost of New York City's budget for software and registration expenses. These are rough estimates and cannot be relied on as correct until more direction is given and the ROV can work with us based on that direction to get a more detailed estimate.

In addition to the election costs, the City would need to budget at least \$600,000 on outreach, double the amount spent by the City and County of San Francisco to reach out to only people with children in the school district who were allowed to vote when non-citizens. The City of San José would need to do a much more extensive outreach to reach all non-citizens. Outreach would

need to be in multiple languages and work to educate voters and mitigate any confusion by working with community-based organizations.

**The population of San José is 40% non-citizen with 47% of that number are non-citizens. The number above is 47% of 40% of the current registered voters.*

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