



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Lee Wilcox

**SUBJECT: PROPOSED PUBLIC  
CHARGE RULE**

**DATE:** October 10, 2018

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Approved D. D. Sy L Date 10/12/18

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**RECOMMENDATION**

Adopt a resolution opposing the proposed Public Charge rule released by the Department of Homeland Security and published by the Federal Registrar on October 10, 2018, and direct the City Attorney's Office to submit a statement on behalf of the City during the public comment period.

**OUTCOME**

The Mayor and City Council will be informed of a proposed revision to a federal regulation affecting immigrants seeking Legal Permanent Resident status and take necessary actions oppose the change which will authorize the City Administration to initiate next steps.

**BACKGROUND**

The Public Charge rule is a term used in immigration law to refer to a person who is likely to become primarily dependent on the government to meet his or her basic needs. On September 22, 2018, the US Department of Homeland Security released a 447-page document that delineates the proposed changes to the Public Charge rule. The proposed rule expands the definition of what it means to be a public charge, which could force immigrants to stop using essential public programs or risk jeopardizing getting their "green cards" in the future; thus, forcing middle and working class residents to choose between their family's long-term future as permanent residents and securing food, health care, or shelter. The administration recommends the Mayor and City Council oppose the proposed expansion of the Public Charge rule that will limit the ability of immigrants to obtain Legal Permanent Status.

While the proposed rule has been announced, it has not yet taken effect. The proposed rule was published in the Federal Register on October 10, 2018, and public comment will be accepted by the Federal Register until December 10, 2018. Furthermore, the rule will not become final until

after the government has responded to public input, and ultimately the details of the rule may change.

## **ANALYSIS**

Within federal immigration law, the Public Charge test is designed to identify people who may depend on the government as their main source of support. If the government determines that a person is likely to become a “public charge,” it can deny a person admission to the U.S. or lawful permanent residence (or “green card” status).

Currently, the only benefits considered in determining who is likely to become a “public charge” are cash assistance, such as Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF), and government-funded institutional long-term care.

Under the proposed rule, benefits that could be considered in a “public charge” determination target key health care, nutrition and housing programs that help participants meet their basic needs:

1. Non-Emergency Medicaid (with some exceptions)
2. Supplemental Nutrition Assistance Program (SNAP)
3. Medicare Part D Low Income Subsidy
4. Housing Assistance (public housing or Section 8 housing vouchers and rental assistance)

The proposed regulation also favors immigrants with higher incomes, increasing the income level for applicants who hope to overcome the “public charge” test. A family of four earning under \$31,000 annually (125 percent of the federal poverty line) would be weighed negatively. A family of four earning over \$63,000 annually (250 percent of the federal poverty line) would be weighed positively and may be able to overcome other negative factors (US Conference of Mayors letter “Opposing Proposed Rule to Expand Definition of a Public Charge”).

### **Expected Impact**

The federal government recognizes that support, like health care and nutrition, help families thrive and remain productive. Furthermore, the government has clarified that immigrant families can seek benefits without fearing that doing so will have negative implications on their immigration case. If this proposed rule is finalized, the government can no longer offer that assurance.

Consequently, the effects of the proposal could reduce the number of immigrants who apply for legal permanent resident status and discourage millions of people from accessing benefits and services for which they are clearly eligible. Immigrants are essential to communities across the US and to the economy, contributing a larger share of economic output than their share of the population. The proposal could have a direct, negative effect on local economies and wellbeing.

Local health and social service providers have emphasized that fear of jeopardizing the opportunity to gain legal permanent status has resulted in people dis-enrolling their families from needed programs. A change in the Public Charge rule could compromise children's health, nutrition, and development; impact access to health care; and reduce housing options.

### **Next Steps**

Consistent with the *Welcoming San Jose Plan*, the Office of Immigrant Affairs will work with the County of Santa Clara Office of Immigrant Relations and partner organizations to ensure reliable and timely messaging and dissemination of information to the affected immigrant community, including:

1. Host an Ethnic Media Roundtable to ensure understanding of this complex regulation and convey key message points to the community.
2. Ensure the dissemination of accurate information about the Public Charge rule, in various languages.
3. Amplify a campaign to submit public comment during the 60-day comment period.
4. Explore a delegation letter opposing the proposed Public Charge rule.

### **EVALUATION AND FOLLOW-UP**

Staff will monitor any developments of the proposed Public Charge rule and will continue to participate in the Federal public process.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the October 23, 2018 Council Meeting.

### **COORDINATION**

This memorandum has been coordinated with the Office of Intergovernmental Relations and the City Attorney's Office.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

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**CEQA**

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

/s/

LEE WILCOX

Chief of Staff

City Manager's Office

For questions, please contact Zulma Maciel, Assistant to the City Manager, at (408) 535-8146.