

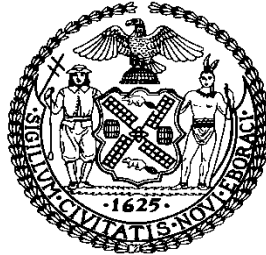
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**THE COUNCIL**

COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

*Robert Newman, Legislative Director*

COMMITTEES ON GOVERNMENTAL OPERATIONS AND IMMIGRATION

Hon. Gale Brewer, Chair of Governmental Operations

Hon. Daniel Dromm, Chair of Immigration

**May 9, 2013**

**Int. No. 410:**

By Council Members Dromm, Rodriguez, Brewer, Foster, James, Lander, Palma, Rose, Williams, Mendez, Ferreras, Mark-Viverito, Reyna, Jackson, Barron, Eugene, Vann, Gonzalez, Arroyo, Chin, Lappin, Koppell, Levin, Comrie, Garodnick, Van Bramer, Richards, Weprin, Wills, Cabrera, Koo, Nelson, Rivera and Koslowitz

**Title:**

A Local Law to amend the New York city charter, in relation to allowing immigrants lawfully present in New York city to vote in municipal elections.

**Charter:**

Adds a new chapter 46-A to the New York city charter

## **1. INTRODUCTION**

Today, the Committees on Governmental Operations and Immigration, chaired by Council Members Gale Brewer and Daniel Dromm, respectively, will hear testimony on Introductory Bill No. 410 (“Int. No. 410”), a bill that would extend voting rights in municipal elections to non-citizens who are lawfully residing in New York City.

Those invited to testify include the Mayor’s Office of Immigrant Affairs, the New York City Board of Elections, interested community based organizations, and immigrant advocates.

## **2. BACKGROUND**

The right to vote has expanded throughout the history of the United States. Originating as a right granted solely to white property owners, the franchise has been extended over time, through great struggle, to non-property owners, non-whites, and women. The right to vote serves as a protection to all other rights, which are a product of our elected government. Voting is, for many, the most significant opportunity they have to impact government and its decision-making related to issues that affect everybody, not just citizens—issues like education, health care, housing, transportation, and economic development. Despite its importance, however, the right to vote is found nowhere in the U.S. Constitution, and such a right does not extend to non-citizen immigrants in New York City, even if they are here permanently and paying taxes.

Many of the over 40 million immigrants residing in the United States are non-citizen<sup>1</sup> professionals who have lived in the United States for many years, contribute

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<sup>1</sup> Non-citizens include legal permanent residents and those with a temporary immigration status, such as asylum or refugee status, or a holder of a work or student visa. Ronald Hayduk, Democracy for All:

greatly to the economy, pay taxes, and own homes and businesses.<sup>2</sup> Despite their many contributions, however, non-citizens are largely precluded from voting. If an immigrant seeks citizenship, the nation's complex naturalization process, the small number of visas available to immigrants, and the current application processing backlog mean there can be a wait of up to ten years to obtain citizenship and, among other things, the right to vote.<sup>3</sup>

Currently one out of every five New York City residents is barred from voting because they are not a citizen.<sup>4</sup> This was not always the case. There were times in history when non-citizens were not only allowed to vote and hold public office, but were encouraged to do so. Until citizenship requirements became common in the 1920s, non-citizens were allowed to vote in many elections and hold public office in nearly two dozen states.<sup>5</sup> Today, however, all fifty states prohibit non-citizens from voting in state-wide and federal elections.<sup>6</sup> Although voting is typically a state issue, the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996<sup>7</sup> made it a federal crime

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Restoring Immigrant Voting Rights in the US, 2, Dec. 2004, available at

<http://www.immigrantvoting.org/Articles/Haydukessay.pdf> (last visited May 3, 2013).

<sup>2</sup> Ronald Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the US*, (Borough of Manhattan Community College, CUNY) at p. 500 available at <http://www.immigrantvoting.org/Articles/Haydukessay.pdf> (last visited on May 3, 2013).

<sup>3</sup> Ronald Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the US*, (Borough of Manhattan Community College, CUNY) at p. 504 available at <http://www.immigrantvoting.org/Articles/Haydukessay.pdf> (last visited on May 3, 2013).

<sup>4</sup> I Vote NYC, *1 in 5 New Yorkers are not allowed to vote: Is this what democracy looks like?* Available at <http://www.ivotenyc.org/?p=213> (last visited on May 2, 2013).

<sup>5</sup> Ronald Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the US*, (Borough of Manhattan Community College, CUNY) at p. 505 available at <http://www.immigrantvoting.org/Articles/Haydukessay.pdf> (last visited on May 3, 2013).

<sup>6</sup> Stanley A. Renshon, *Allowing Non-Citizens to Vote in the United States? Why Not*, Center for Immigration Studies (Sept. 2008), 7, available at [http://www.cis.org/sites/cis.org/files/articles/2008/renshon\\_08.pdf](http://www.cis.org/sites/cis.org/files/articles/2008/renshon_08.pdf) (last visited May 3, 2013).

<sup>7</sup> Section 216. Criminal Penalty for Voting by Aliens in Federal Elections

for non-citizens to vote in federal elections.<sup>8</sup> Additionally, non-citizens without a green card are prohibited from donating to any candidate for political office.<sup>9</sup>

Despite the broad prohibitions at the state and federal level, there are a few jurisdictions that allow non-citizens to participate in local and/or school board elections. Beginning in 1970, New York City permitted non-citizens to vote in local school board elections.<sup>10</sup> This right continued until 2003, when New York City school boards were abolished.<sup>11</sup> Since 1988, Chicago residents have been allowed to vote in school board elections.<sup>12</sup> And since 1992, six towns in Maryland have enacted laws permitting non-citizens to vote in local elections.<sup>13</sup> In 1999, a number of jurisdictions in Massachusetts expanded voting rights for local elections to its non-citizen residents.<sup>14</sup> The city of Cambridge went the furthest by choosing not to define the term “non-citizen,” thereby allowing both documented and undocumented immigrants to participate in local

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<sup>8</sup> Stanley Renshon, *Allowing Non-citizens to Vote in the United States? Why Not*, Center for Immigration Studies (September 2008, at p. 2. Available at <http://www.cis.org/NoncitizenVoting> (last visited on May 2, 2013).

<sup>9</sup> 2 U.S.C. §441e(a).

<sup>10</sup> Non-citizen voting ended because, in 2003, school boards were eliminated because of restructuring. Ronald Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the US*, (Borough of Manhattan Community College, CUNY) at p. 501 available at <http://www.immigrantvoting.org/Articles/Haydukessay.pdf> (last visited on May 3, 2013).

<sup>11</sup> Ronald Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the US*, (Borough of Manhattan Community College, CUNY) at p. 501 available at <http://www.immigrantvoting.org/Articles/Haydukessay.pdf> (last visited on May 3, 2013).

<sup>12</sup> Ron Hayduk, *Immigrant Voting Rights Receive More Attention*, Migration Information Source (November 2004) see general, available at <http://www.migrationinformation.org/USfocus/display.cfm?ID=265> (last visited on May 2, 2013).

<sup>13</sup> Ronald Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the US*, Borough of Manhattan Community College, CUNY, (December 2004) at p. 520 available at <http://www.immigrantvoting.org/Articles/Haydukessay.pdf> (last visited on May 2, 2013). In Takoma Park, Maryland, both documented and undocumented immigrants have been able to vote in local elections since 1991. A study has been done to illustrate non-citizen voter participation in Takoma Park from 1995 through 2007. For the 1995 election year, data shows of the 195 registered non-citizen voters, only 20 voted in that particular year. The number of non-citizen voting increased in 1997 when 71 non-citizens voted out of the 287 non-citizen registered voters. The lowest turnout for non-citizen voting occurred in 2007 when ten non-citizens voter voted during that election year. *Allowing Non-Citizens to Vote in the United States? Why Not*.

<sup>14</sup> Ronald Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the US*, Borough of Manhattan Community College, CUNY, (December 2004) at p. 520 & 521 available at <http://www.immigrantvoting.org/Articles/Haydukessay.pdf> (last visited on May 2, 2013).

elections.<sup>15</sup> These laws have not gone into effect, however, because the Massachusetts state legislature has not enacted enabling legislation permitting localities within the state to make such changes.<sup>16</sup> Several other cities and states have considered legislation to extend voting rights to non-citizens as well.<sup>17</sup>

As for New York City, one advocacy group estimates that the legalization of non-citizen voting would allow approximately 1.5 million non-citizen residents, who contribute \$18.2 million in New York State taxes annually, own homes and businesses and have children enrolled in New York City's public schools, to participate in local elections.<sup>18</sup> The Council Committee on Governmental Operations heard previous legislation to permit non-citizen voting in November of 2005.

### **3. SUMMARY AND ANALYSIS OF INT. NO. 410**

If enacted, Int. No. 410 would allow non-citizens who are lawfully present in the United State to vote in elections for local office. Int. No. 410 would create a new category of voters, called "municipal voters," who are non-US citizens lawfully present in the United States on the date of the election at which he or she is voting, who has lived in New York City for at least six months, and who has registered to vote. These

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<sup>15</sup> Ronald Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the US*, Borough of Manhattan Community College, CUNY, (December 2004) at p. 520 & 521 available at <http://www.immigrantvoting.org/Articles/Haydukessay.pdf> (last visited on May 2, 2013).

<sup>16</sup> Standley Renshon, *Non-citizen Voting – RIP, Again*, Center for Immigration Studies, (November 3, 2010) available at <http://www.cis.org/renshon/non-citizen-voting-rip-again> (last visited on May 3, 2013) and Ronald Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the US*, Borough of Manhattan Community College, CUNY, (December 2004) at p. 521 available at <http://www.immigrantvoting.org/Articles/Haydukessay.pdf> (last visited on May 3, 2013).

<sup>17</sup> Legislation has been introduced to legalize non-citizen voting at the state level in, at a minimum, Connecticut, Minnesota, New York State, and the District of Columbia, and to permit localities to allow such voting in Massachusetts and Texas. Website of the Immigrant Voting Project, available at [www.immigrantvoting.org](http://www.immigrantvoting.org).

<sup>18</sup> I Vote NYC, *Statement of Principles*, see generally available at [http://www.ivoteny.org/?page\\_id=427](http://www.ivoteny.org/?page_id=427) (last visited on May 2, 2013).

municipal voters would be able to vote in municipal elections, which are elections for Mayor, Comptroller, Public Advocate, New York City Councilmember, and Borough President.

Municipal voters would have the same rights and responsibilities with respect to municipal elections as citizen voters. They would have to meet the same requirements, other than citizenship, for citizen voters, such as being 18 years of age, not being in prison or parole for a felony conviction, not be judged mentally incompetent by a court, and not claiming the right to vote elsewhere. Municipal voters could be challenged as citizen voters can, except that the qualification oath that municipal voters swear to would be modified to reflect the different requirements for registering as a municipal voter. Municipal voters who become citizens would remain qualified to vote as municipal voters until they no longer meet the requirements of this law or until they register to vote as a citizen voter.

Under Int. No. 410, municipal voters could register to vote and vote in any municipal election. The New York City Board of Elections (“BOE”) would be required to create a registration form for municipal voters, register such voters, and adopt rules to implement the entirety of this law.

BOE would be required to make a single list combining municipal and citizen voters for each election district, with an “M” next to municipal voter names. Under Int. No. 410, municipal voters could not be required to form a separate line, vote in a separate location, or vote in a different manner from citizen voters.

The bill would require BOE to create and distribute municipal voter registration forms and make them available wherever citizen voter registration forms are available.

These forms would be required to include the following information:

- notice that municipal voters may vote only in municipal elections,
- information on qualifications for being a municipal and citizen voter, and
- notice that it is a crime to provide false information to BOE.

The form would also be required to include space for name, address, date of birth, citizenship status, gender, party enrollment, telephone number, and signature of the applicant, along with an affirmation of understanding the requirements for becoming a municipal voter and voting validly in municipal elections.

Registration deadlines for municipal voters would be the same as for citizen voters (generally 25 days before an election), and municipal voters who enrolled in a political party could participate in primary elections for that party.

The bill would require BOE to create and implement an absentee ballot and absentee voting procedure, a notification system, and change of address procedure for municipal elections that is the same as for citizen voters.

The bill would prohibit inquiries as to the immigration status of a potential or registered municipal voter, except to determine whether he or she qualifies to vote. If such information were volunteered, it could not be recorded or shared. Municipal voters would have the same rights to confidentiality as citizen voters, any could not be asked to produce a photo ID or proof of address as a prerequisite to voting except pursuant to state or federal law. Lists of municipal voters could not be published or distributed to the public separately from a list of all qualified voters.

A public officer who knowingly and willfully omits, refuses, neglects to perform, or who hinders or delays or attempts to hinder or delay the performance of any act required by Int. No. 410, if not otherwise guilty of any other law, would be deemed guilty of a misdemeanor, to be imprisoned for not more than one year, or fined between \$150 and \$500, or a combination of fine and imprisonment.

BOE must consult with community and advocacy groups in implementing this law. This law would take effect 180 days after its enactment into law.



Int. No. 410

By Council Members Dromm, Rodriguez, Brewer, Foster, James, Lander, Palma, Rose, Williams, Mendez, Ferreras, Mark-Viverito, Reyna, Jackson, Barron, Eugene, Vann, Gonzalez, Arroyo, Chin, Lappin, Koppell, Levin, Comrie, Garodnick, Van Bramer, Richards, Weprin, Wills, Cabrera, Koo, Nelson, Rivera and Koslowitz

A Local Law to amend the New York city charter, in relation to allowing immigrants lawfully present in New York city to vote in municipal elections.

Be it enacted by the Council as follows:

Section 1. The New York city charter is amended by adding a new chapter forty-six-a, to read as follows:

**Chapter 46-A**

**CITY ELECTIONS**

**Voting By Non-Citizen Residents**

**§1057-b Definitions.**

**§1057-c Registering to Vote.**

**§1057-d The role of the New York City Board of Elections.**

**§1057-e Poll administration.**

**§1057-f Municipal voter registration forms.**

**§1057-g Party affiliations.**

**§1057-h Availability of municipal voter registration forms.**

**§1057-i Absentee ballots.**

**§1057-j Registration deadlines.**

**§1057-k Municipal voter notification.**

**§1057-l Change of address procedures.**

**§1057-m Confidentiality.**

**§1057-n Community participation.**

**§1057-o Transitioning to citizenship.**

**§1057-p Challenges.**

**§1057-q State and Federal elections.**

**§1057-r Violations.**

§1057-b Definitions. For purposes of this chapter, the following terms shall have the following meanings:

1. A "municipal voter" shall mean a person who is not a United States citizen, but is lawfully present in the United States on the date of the election in which he or she is voting, and has been a resident of New York City, as defined herein, for six months or longer by the date of such election, and who meets all qualifications for registering to vote under the New York state election law, except for possessing United States citizenship, and has registered to vote with the New York city board of elections under this chapter.

2. A "resident of New York city" shall mean a person who resides within the five boroughs of New York city.

3. A "municipal election" shall mean the designation, nomination and election process for a municipal officer, including the mayor, the comptroller, the public advocate, members of the city council, and the borough presidents. Municipal elections include all primary, special and general elections and all municipal ballot measures.

4. "Municipal voter registration" shall mean the method by which the New York city board of elections registers new municipal voters pursuant to the provisions of this chapter.

5. "New York state board of elections voter registration" shall mean the method currently used by the New York state board of elections to register voters under the New York state election law.

§1057-c Registering to vote. All municipal voters shall have their names entered on the city board of election's list of registered voters and may thereafter vote in any municipal election.

§1057-d The role of the New York City Board of Elections. The New York city board of elections shall create a municipal voter registration form for use by municipal voters, register municipal voters and adopt all necessary rules to carry out the provisions of this chapter. Municipal voters shall be entitled to the same rights and privileges as citizen voters with regard to municipal elections.

§1057-e Poll administration. For each municipal election, the New York city board of elections shall produce a single poll list that combines municipal voters and other voters registered under the New York state election law for each election district. Municipal voters shall not be required to form a separate line or vote in a separate location from citizens registered under the New York state election law. Poll list entries for municipal voters shall be marked with an "M". Municipal voters shall vote using the same voting methods as citizen voters.

§1057-f Municipal voter registration forms. The New York city board of elections shall design and distribute municipal voter registration forms. Such forms shall include, but not be limited to, the following:

a. Notice that individuals registering using municipal voter forms will be registered to vote in municipal elections only, and expressly state that municipal voters are not qualified to vote in state or federal elections.

b. Information on the qualifications to vote at the state and federal levels according to the New York state election law, and information on how individuals who meet such qualifications can register.

c. Notice that individuals who are not legally present in the United States at the time of the next election, or have been residents of New York city for less than six

months by the time of the next election, do not qualify to register to vote as municipal voters.

d. Notice that registration and enrollment is not complete until the municipal voter registration form is received and accepted by the New York city board of elections.

e. Notice that it is a crime, along with the attendant penalties and possible immigration consequences, to procure a false registration or to furnish false information to the board of elections.

f. Notice that political party enrollment is optional, but that in order to vote in a primary election of a political party, a voter must enroll in that political party.

g. Notice that a voter notification form will be mailed to each applicant whose completed form is received.

h. The telephone number of the relevant county board of elections and a phone number at the state board of elections that an individual may call to obtain answers to questions regarding registration, if one exists.

i. The form shall also include the following:

1. Space to indicate the name and address of the applicant.

2. Space to indicate the date of birth of the applicant.

3. Space to indicate whether the applicant is a citizen of the United States.

4. Space to indicate the gender of the applicant, including notice that providing such information is optional.

5. Space to indicate whether the applicant wishes to enroll in a party and, if so, which party.

6. Space to indicate the telephone number of the applicant, including notice that providing such information is optional

7. Space for the applicant to execute the form on a line which is clearly labeled "signature of applicant" preceded by the following form of affirmation: AFFIDAVIT: I swear or affirm that I will be lawfully present in the United States and will have been a

resident of New York City for a minimum of six months by the time of the next election and, to the best of my knowledge, I meet all of the requirements to register to vote in New York State except for United States citizenship. This is my signature or mark on the line below. All the information contained on this application is true. I understand that if it is not true I can be convicted and fined up to \$500 and/or jailed for up to one year.

§1057-g Party affiliations. Individuals who enroll in a political party using a municipal voter registration form shall be considered qualified members of that party for the purposes of primary elections and candidate nomination processes.

§1057-h Availability of municipal voter registration forms. Municipal voter registration forms shall be made available at every location where New York state board of elections voter registration forms are available, including, but not limited to, libraries, post offices, on the internet, in public schools, and at all locations and government agencies and offices required by section 1057-a of the charter.

§1057-i Absentee Ballots. The New York city board of elections will develop an absentee ballot and absentee voting procedures for municipal voters.

§1057-j Registration deadlines. Registration deadlines for municipal voters in each election shall be the same as the deadlines set by the New York state board of elections for citizen voters in that election.

§1057-k Municipal voter notification. The New York city board of elections shall create and implement a municipal voter notification system consistent with New York state election law.

§1057-l Change of address procedures. The New York city board of elections shall create a process, consistent with the process used by the New York state board of elections for citizen voters, by which a municipal voter can change or update his or her address.

§1057-m Confidentiality. a. No inquiries shall be made as to the immigration status of potential municipal voter or municipal voter, other than to ascertain whether he

or she qualifies to vote under this chapter. If such information is volunteered to any city employee, it will not be recorded or shared with any other federal, state, or local agency, except as otherwise required by law.

b. All federal, state, and municipal confidentiality policies that pertain to citizen voters shall also apply to municipal voters.

c. No municipal voter shall be asked to produce photographic identification or proof of address as a prerequisite for voter registration, except as required by state or federal law.

d. Lists of municipal voters shall not be published, distributed or otherwise provided to the public separately or distinctly from the complete voter registration list of all qualified voters in New York city or a political subdivision thereof.

§1057-n Community participation. The New York city board of elections shall consult regularly with appropriate organizations, including advocacy groups and community associations, in the implementation of these provisions.

§1057-o Transitioning to citizenship. Municipal voters who are registered to vote under this chapter and who subsequently become United States citizens shall remain qualified to vote under this provision until such time as they no longer meet the qualifications set forth in this chapter or until they register to vote on a New York state board of elections voter registration form. Upon filing of an individual's New York state voter registration form, such individual's existing municipal voter registration shall become invalid.

§1057-p Challenges. Any municipal voter's qualifications to register to vote under this chapter may be challenged according to the terms of the New York state election law, except that "The Qualification Oath" shall be altered for municipal voters to read: "You do swear (or affirm) that you are eighteen years of age or older, that you are lawfully present in the United States, that you are a resident of this state and of New York city, that you still reside at the same address from which you have been duly registered in this

election district, that you have not voted at this election, and that you do not know of any reason why you are not qualified to vote at this election. You do further declare that you are aware that it is a crime to make any false statement and that all the statements you have made to the board have been true and that you understand that a false statement is perjury and, if you make such a false statement, you will be guilty of a misdemeanor."

§1057-q State or Federal elections. Nothing in this chapter shall be construed so as to confer upon non-citizens the right to vote for any state or federal office or on any state or federal ballot question.

§1057-r Violations. a. Any person who knowingly and willfully violates any provision of this chapter shall be guilty of a misdemeanor.

b. A public officer who knowingly and willfully omits, refuses or neglects to perform any act required of him by this chapter, who knowingly and willfully refuses to permit the doing of any act authorized by this chapter or who knowingly and willfully hinders, or delays or attempts to hinder or delay the performance of such an act is, if not otherwise provided by § 17-128 of the election law or any other law, guilty of a misdemeanor.

c. Any person convicted of a misdemeanor under this section shall be punished by imprisonment for not more than one year, or by a fine of not less than one hundred dollars or more than five hundred dollars, or a combination of fine and imprisonment.

§2. This local law shall be effective 180 days after its enactment.

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Int. No. 245/2006

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