

A Report from the
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NONCITIZEN VOTING IN NEW YORK CITY

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The Master's Program in Public Administration at The City College of New York's Colin Powell School for Civic and Global Leadership prepares students for management careers in government agencies and nonprofit organizations.

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Responsibility for the content of this report rests solely with the authors.

Contents

Acknowledgements	1
Chapter 1: Summary and Introduction	3
Chapter 2: Noncitizen Voting in New York City	4
The Proposal for New York City	4
History of Noncitizen Voting in New York	4
Chapter 3: Noncitizens in New York City	5
The Number of Noncitizens in New York City	5
Noncitizen Voting Behavior	7
Chapter 4: Implementing Noncitizen Voting	9
Legal Concerns	9
Administrative Concerns	11
Chapter 5: Noncitizen Voting in the U.S. and Abroad	12
Noncitizen Voting in the U.S.	13
Noncitizen Voting Abroad	15
Box 1: History of Noncitizen Voting in the U.S.	17
Box 2: Summary of Arguments for and against Noncitizen Voting	18
Appendix: Percent of Noncitizens by NYC Neighborhood	20

Chapter 1

Summary and Introduction

Should New York City allow documented noncitizen residents to vote in municipal elections? The New York City Council has considered the question in its last three terms, and will likely consider it again this term. Noncitizens represent about 18 percent of the New York City population (see Table 1). Even excluding the roughly half-million noncitizens without documentation, legalizing noncitizen voting could mean that as many as one million residents of the city could become eligible to vote.

Table 1.

Noncitizens in New York City, 2011

	Number (thousands)	Percent of City Population
Documented	1,060	13
Undocumented	412	5
Total	1,470	18

Source: Based on data from the U.S. Census Bureau, American Community Survey, 2011 as reported in New York City Department of City Planning, “The Newest New Yorkers: Characteristics of the City’s Foreign-Born Population.” NYC Office of the Mayor, December 2013, Web access April 2014: www.nyc.gov/population.

Such figures suggest that noncitizens could have a significant impact on municipal elections. Much depends on the length of the residency period required before voting: a shorter residency period would allow a greater proportion of students, diplomats, and other temporary visitors to vote. The impact would also depend on turnout among new voters and how their political leanings compare with current voters. Advocates of noncitizen voting push for more inclusion as a matter of justice and democracy; opponents favor moderate reforms to immigration law to encourage naturalization before voting.

Noncitizens have not always been banned from voting in the U.S. During the colonial and Civil War eras, noncitizen voting was permitted in 40 states and federal territories at different times, but it contracted during World War I and ceased altogether by 1928. In the last quarter century, more than 30 towns, cities, or states in the U.S. have explored, proposed, or passed some form of noncitizen voting, including Maryland, Massachusetts, California, and Washington, D.C.

As it has elsewhere, noncitizen voting would confront administrative and legal hurdles. A critical question is whether it is legal for New York City to enact noncitizen voting. State law may require U.S. citizenship to vote in local elections, and any change to alien suffrage at the municipal level in New York City may require a city-wide referendum and changes to state law. State laws are not the only problem; the New York State Constitution mandates that citizens must have voting rights, and courts must interpret whether this excludes noncitizens from voting.

Chapter 2

Noncitizen Voting in New York City

New York City Councilmember Daniel Dromm will likely introduce legislation in the current term to legalize noncitizen voting in municipal elections. It will not be the city's first experience with expanding voting for noncitizens. The practice has a long history in the state.

The Proposal for New York City

Councilmember Dromm's bill, referred to as an 'introduction' when pending before the City Council, will likely resemble bills that were on the City Council agenda previously: Introductions 628, 245, and 410 in 2005, 2006, and 2010, respectively. Introduction 410 had 31 co-sponsors, a solid majority of the City Council. Even so, none of the bills made it to a vote, and the City Council dropped them from the agenda when the four-year City Council terms ended.

The forthcoming bill will closely resemble Introduction 410. It will propose to amend the City Charter to permit documented noncitizens – both immigrants and non-immigrants – to vote in municipal elections. These elections include the races for mayor, comptroller, public advocate, borough presidents, and city councilmembers, as well as referenda and other local contests. Noncitizens will also be allowed to join political parties and vote in primaries for municipal elections, and they may vote by absentee ballot. The bill will require noncitizens to live in the city for a certain period of time prior to the election and to satisfy all existing voter eligibility requirements other than citizenship. The bill will give such voters the title "Municipal Voter."

Registration for municipal voters will be separate from the normal registration process. The bill will require municipal voters to sign a declaration of their lawful status and length of residency in the city, and the registration form will clearly state that municipal voters are authorized to vote only in municipal elections.

After undergoing this separate registration process, the municipal voter lists will be merged with the general voter list on Election Day, distinguishing municipal voters only with the letter "M". Municipal voters shall not be required to stand in a separate line when voting, to present photographic identification at the polls, or to answer questions about their immigration status, except as required to determine eligibility to vote or as required by state or federal law. The bill will also grant a grace period of at least six months after passage to give the Board of Elections time to consult thoroughly with relevant civil society organizations to facilitate the implementation of the law.

History of Noncitizen Voting in New York

New York's original state constitution gave the vote to all white male residents – citizen or noncitizen – who owned property and declared allegiance to the state. Not long after, New York became one of the first states to ban noncitizen voting: by 1804, the state election law

required citizenship to vote, and an 1827 law defined “citizenship” unambiguously as U.S. citizenship.¹

Noncitizen voting reappeared in the New York State Legislature in the mid-1990s. New York State Assemblyman Vito Lopez introduced bills in 1993, 1997, and 2003 that would have enfranchised noncitizens in local, state, and federal elections. Assemblyman Nick Perry introduced parallel bills that limited noncitizen voting to local elections and imposed a three-year residency requirement. All of the state assemblymembers’ bills were defeated.²

New York City permitted noncitizens to vote in local school board elections between 1968 and 2003. As discussed in more detail in Chapter 4, noncitizen voting in school boards was legal because school boards were considered outside local government and because of ambiguous language in key articles of the state education law.

Chapter 3

Noncitizens In New York City

If successful, current proposals could mean one million new voters in New York City. How those voters would influence the outcome of elections depends on their distribution and voting behavior.

The Number of Noncitizens in New York City

Of the 1.47 million noncitizens in New York City, 1.06 million are “documented,” meaning that they are in the U.S. legally and hold an immigrant visa or a nonimmigrant visa. Those with immigrant visas are primarily lawful permanent residents, asylees, and refugees; those with nonimmigrant visas include students, diplomats, temporary workers, and tourists. Recent noncitizen voting proposals would enfranchise all documented noncitizens and impose a six-month residency requirement before voting. It is likely that the vast majority of noncitizens are of voting age: although official age data on noncitizens is lacking, data from the New York City Department of City Planning show that about 95 percent of New York’s foreign-born population is of voting age. Therefore, legalizing noncitizen voting could create about one million new eligible voters.³

It is difficult to ascertain the number of nonimmigrant visa holders that reside in New York City at any given time, since this population constantly fluctuates. The Department of Homeland Security estimates that 1.9 million nonimmigrant visa holders were present in the U.S. at any

¹ Ron Hayduk. *Democracy for All: Restoring Immigrant Voting Rights in the U.S.* New York: Routledge, 2006.

² Michael Huang. “Citizenship and Voting”. *Gothem Gazette*. August 25, 2003. Web access February 26, 2014: <http://www.gothamgazette.com/index.php/open-government/1940-citizenship-and-voting>

³ The Fiscal Policy Institute, using a different method that starts with the voting-age population, also estimates one million potential new voters: Fiscal Policy Institute. “Data for Pre-Citizen Voting Debate in City Council”. May 9, 2013. Web: <http://fiscalspolicy.org/data-for-pre-citizen-voting-debate-in-city-council>

given moment in 2011, and that 12% of these, or 228,000, were in New York State.⁴ Since we know New York City is home to 71 percent of New York State's foreign-born population, we can roughly estimate that 161,880 nonimmigrant visa holders were in New York City. However, the number in New York City varies greatly. New York City probably attracts a disproportionate share of the state's non-immigrant visa holders, since tourists, students, diplomats, and temporary workers are more likely to come to the city than to the rest of the state. And one must keep in mind that more than three-quarters of non-immigrant visa holders are tourists,⁵ who are less likely to stay in the city for more than six months and thus would not satisfy the residency requirement for voting.

The impact of noncitizen voting will depend in part on the distribution and concentration of noncitizens across the five boroughs. Fifty eight percent of noncitizens live in either Brooklyn (31 percent) or Queens (27 percent). Nineteen percent reside in Manhattan and 17 percent in the Bronx. Only about six percent of the noncitizen populations reside in Staten Island.

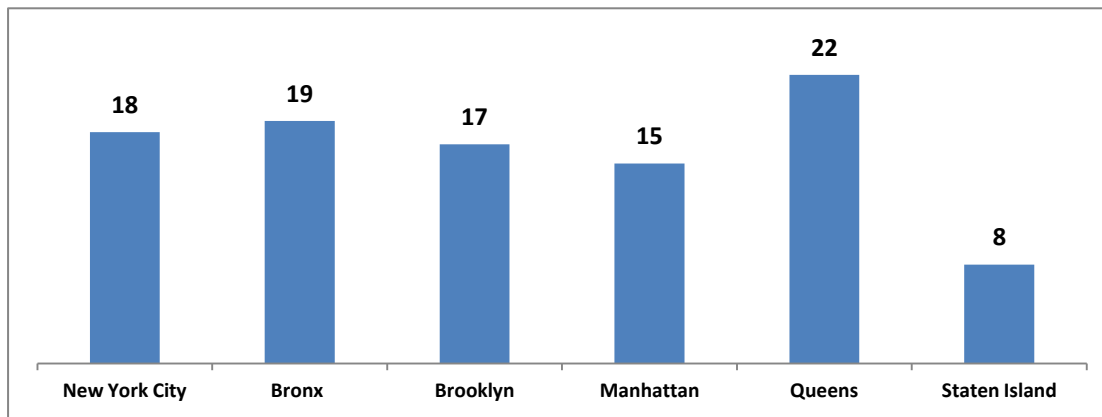
Queens has the largest concentration of noncitizens. They make up almost 22 percent of the population in the borough (see Figure 1). By contrast, noncitizens make up only 8 percent of the population in Staten Island. Fourteen neighborhoods have noncitizen populations that make up 30 percent or more of the population. North Corona, has the highest concentration of noncitizens. Fifty four percent of that neighborhood's population is made up of noncitizens (see Figure 2 and Appendix).

⁴ Bryan Baker. "Estimates of the Size and Characteristics of the Resident Nonimmigrant Population in the United States." United States. Department of Homeland Security. Office of Immigration Statistics. Policy Directorate Working Paper: January 2012.

⁵ United States. Department of Homeland Security. "Yearbook of Immigration Statistics: 2011." Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics: September 2012.

Figure 1

Percent of Borough Population Made Up of Noncitizens, 2011



Source: Based on data from the U.S. Census Bureau, American Community Survey, 2011 as reported in New York City Department of City Planning, “The Newest New Yorkers: Characteristics of the City’s Foreign-Born Population.” NYC Office of the Mayor, December 2013, Web access April 2014: www.nyc.gov/population.

Noncitizen Voting Behavior

The impact of noncitizen voting will also depend on the rate at which they turn out to vote. One way to estimate this is to look at voter turnout among naturalized citizens, who often live in the same communities as noncitizens. Data show that communities with higher percentages of naturalized citizens often turn out to vote in New York elections at rates lower than that of communities of U.S.-born citizens. Those naturalized citizens who vote are more likely to do so when the candidate is of their ethnicity.⁶ If non-citizens’ voting habits are similar to those of naturalized citizens, then voter turnout may be low among non-citizens overall, especially for candidates not of their ethnicity.

Generalization, however, is problematic; some immigrant communities may participate at higher rates than others. New York City’s largest foreign-born community, the Dominicans, has a history of political engagement and a well-established infrastructure of community organizations.⁷ Membership in such organizations is a stronger predictor of political participation than socio-economic factors such as education level, according to one study.⁸

⁶ NYU Wagner Capstone Team. “Who Votes? Voter Turnout in New York City.” A Report of the New York City Campaign Finance Board. June 11, 2012.

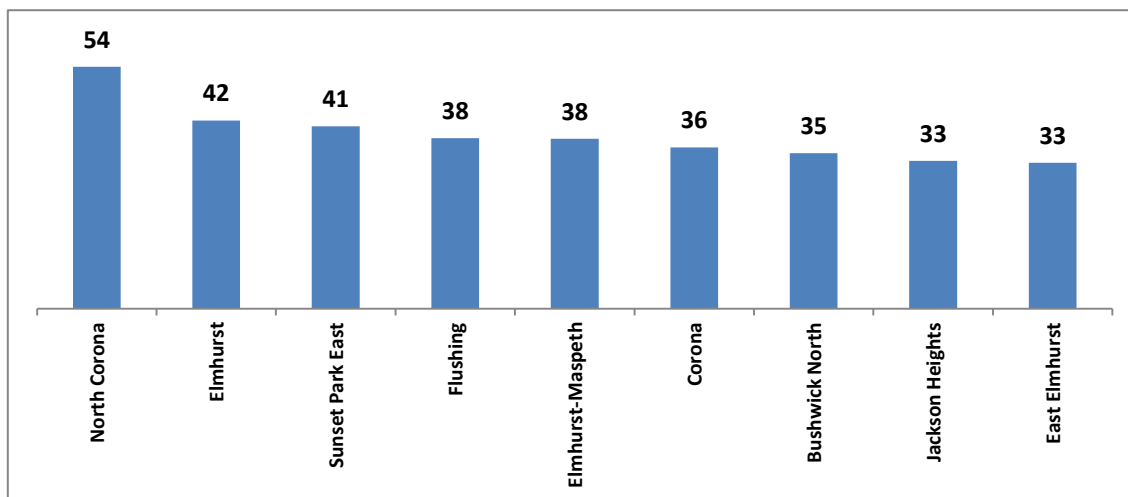
⁷ Howard Jordan. “Dominicans in New York: getting a slice of the apple.” NACLA Report on the Americas. March-April 1997.

⁸ Lorraine Minnite, Jennifer Holdaway, and Ronald Hayduk. “The Political Participation of Immigrants in New York”. From *In Defense of the Alien*, Vol. 23 (2000), pp. 192-228. Published by the Center for Migration Studies of New York, Inc. Stable URL: <http://www.jstor.org/stable/23141269>

These Dominican organizations have promoted policies to address the needs of the low-income population, including issues of housing, education, health care, and jobs.

Figure 2

The Ten Neighborhoods With the Highest Percent of Noncitizens, 2011



Source: Based on data from the U.S. Census Bureau, American Community Survey, 2011 as reported in New York City Department of City Planning, "The Newest New Yorkers: Characteristics of the City's Foreign-Born Population." NYC Office of the Mayor, December 2013, Web access April 2014: www.nyc.gov/population.

Beyond the Dominican community, foreign-born Latinos in general vote at higher rates than foreign-born whites and Asians.⁹ However, noncitizen Latinos tend to participate less than Latino citizens in political activity such as signing petitions, volunteering for campaigns, attending meetings or rallies, and donating money to campaigns. According to one study based on the Latino National Political Survey, Latino non-citizens' political participation rates were less than one third of those of Latino citizens.¹⁰

The impact of noncitizen voting on elections will also reflect how the views of newly enfranchised voters compare with those of others. However, assessing these views is difficult because few public opinion surveys distinguish between citizens and noncitizens.¹¹ Nonetheless, the poll results from the Pew Hispanic Center show that Latinos who vote tend to support Democrats. Although Latino Republicans won several key statewide races in the 2010

⁹ Lorraine Minnite, et al., "Political Participation," 2000.

¹⁰ David L. Leal. "Political Participation by Latino Non-Citizens in the United States." *British Journal of Political Science*, Vol. 32, No. 2 (Apr., 2002), pp. 353-370. London: Cambridge University Press. Retrieved from: <http://www.jstor.org/stable/4092222>

¹¹ David L. Leal, "Political Participation," April 2002.

elections, Democrats received 60% of the Latino vote overall.¹² Latinos have voted in favor of Democratic presidential candidates in every election since 1980, and 71% of Latinos voted for Barack Obama in 2012.¹³

Asian-Americans in New York – except for the Vietnamese – also favor the Democrats. According to the Asian American Legal Defense and Education Fund, 86% of Asian-American New Yorkers, including 81% of Chinese-Americans in New York City (the second-largest foreign-born group), voted for Obama in 2012. Those of Central Asian descent voted for Obama at higher rates, and the Vietnamese were the only group in which a minority – 44% – voted for Obama. The result for the foreign-born was only slightly lower, at 77%. Despite favoring Democrats overall, Asian-Americans are more conservative on social issues. Only 37% of Asian-Americans nation-wide support same-sex marriage, and the percentage is lower among foreign-born Asian-Americans.¹⁴

Chapter 4

Implementing Noncitizen Voting

Any proposal to expand voting to noncitizens would confront legal hurdles and administrative challenges. The debate on noncitizen voting would also raise concerns about the social and political impact of expanded voting rights (see Box 2 for a summary of the debate on noncitizen voting).

Legal Concerns

Noncitizen voting may face legal challenges on several fronts. In 2013 testimony before the City Council, deputy Mayoral Counselor William Heinzen stated that noncitizen voting is inconsistent with the New York State Constitution and state Election Law. He went on to argue that its approval would require a city-wide referendum and a review by a federal court to confirm compliance with the Voting Rights Act.¹⁵ Proponents of noncitizen voting refute these claims, citing alternative provisions that provide ample room for legal interpretation.

New York’s Constitution and State Laws Article 2, Section 1 of the New York State Constitution states: “Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people.” This may be

¹² Mark Hugo Lopez, “The Latino Vote in the 2010 Elections,” Washington, D.C.: Pew Hispanic Center, November 3, 2010.

¹³ Mark Hugo Lopez and Paul Taylor, “Latino Voters in the 2012 Election.” Washington, D.C.: Pew Hispanic Center, November 7, 2012.

¹⁴ Asian American Legal Defense and Education Fund. “The Asian American Vote 2012.” Published by AALDEF in New York in 2013. Retrieved from: <http://aaldef.org/Asian%20American%20Vote%202012.pdf>

¹⁵ William Heinzen. New York City Office of the Mayor. Testimony submitted to the New York City Council. Joint hearing of the Governmental Operations Committee and the Immigration Committee. Topic: Introduction 410. Held on May 9, 2013.

interpreted, on the one hand, as a ceiling that limits the vote to citizens: citizens *and none else* shall have the franchise. On the other hand, Lauren Gilbert, a professor of Constitutional Law and Immigration Law at St. Thomas University, argues that this statement is a floor that sets the minimum standard for enfranchisement: *at least every citizen* should have the franchise, but the people, through their democratic institutions, may decide to enfranchise noncitizens as well.¹⁶

The state Election Law appears to resolve the ambiguity in the constitution. Section 5-102(1) of the law states: “No person shall be qualified to register for and vote at any election unless he is a citizen of the United States.” Although that provision sounds definitive, Section 1-102 of the same law issues a caveat: it says specific provisions of other laws shall override provisions of the Election Law, unless the Election Law explicitly states that no other law may take precedence. According to Jerry Vattamala, an attorney at the Asian American Legal Defense and Education Fund, a City Council bill authorizing noncitizen voting would take precedence over the Election Law, because the Election Law could have – but did not – specify that the citizenship requirement would stand irrespective of other laws.¹⁷

Another issue is whether noncitizen voting would require a city-wide referendum. Section 23(2)(e) of the New York State Municipal Home Rule Law states that a referendum is required in order to pass any law that “changes the method of nominating, electing or removing an elective officer.” The Bloomberg administration argued that the procedural changes necessary to implement noncitizen voting would constitute a change in electoral methods. Proponents, in contrast, argue that expanding the franchise is not equivalent to a change in electoral method. Furthermore, proponents note that noncitizen voting is absent from Section 11 of the Municipal Home Rule Law, which details specific matters on which local governments may not pass ordinances that supersede state laws. If the home rule provisions meant to preclude the expansion of the franchise by local governments, Section 11 would have specified this, proponents argue.

New York City School Board Elections: A Precedent? Past noncitizen voting in New York City school board elections suggests that the city’s laws may contain legal precedent for a city-wide policy. New York City permitted noncitizens to vote in local school board elections between 1968 and 2003.¹⁸ This was legal because school boards were considered outside local government, which the State Constitution defines as “a county, city, town, or village,”¹⁹ thus school board elections were not subject to state election law.²⁰ Moreover, lawyers arguing an appeal to the Supreme Court in 1979 over whether New York City could hire non-citizens as teachers in public schools noted that “appellants as an administrative matter have interpreted

¹⁶ Lauren Gilbert. “Non-Citizen Voting in New York City.” Lecture delivered at the New York City Bar, June 24, 2014.

¹⁷ Jerry Vattamala. “Non-Citizen Voting in New York City.” Panel discussion at the New York City Bar, June 24, 2014.

¹⁸ Tara Kini. “Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections.” *California Law Review*, Vol. 93, No. 1., pp. 271-321. January, 2005.

¹⁹ New York State Constitution. Article IX, Section 3(d)(2). New York Department of State. January 2014. Web access: www.dos.ny.gov

²⁰ Cecilia Aranzamendez. Personal Interview. March 8, 2014. Hoboken, NJ.

the statute governing New York City's unique community school boards [...] to permit aliens who are the parents of public school students to participate in these boards."²¹ These administrative interpretations were based in part on an ambiguous phrase in Article 52A, Section 2590-c of the the state Education Law, which granted voting rights in school board elections to each parent who was "a citizen of the state" – the State of New York, not necessarily the United States.²²

Federal Law and Courts A local ordinance to authorize noncitizen voting may require approval from a federal court, according to Section 5 of the federal Voting Rights Act as amended in 1973. The act states that any local jurisdiction seeking to change the qualifications for voting must petition the "United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."

Administrative Concerns

The City will have to settle questions of voter registration. The federal Help America Vote Act, which took effect in 2003, requires citizens to complete a section titled "Verifying Your Identity" that requires a DMV number, Social Security number, valid photo ID, bank statement, or utility bill when registering to vote. In contrast, Introduction 410 (the bill proposed during the last City Council term) required municipal voters only to sign an affidavit. Some parts of Section 1057-m of the bill appeared to proscribe any further verification of voter identity. Other parts of Section 1057-m, however, allowed exceptions for state and federal laws on identity verification, suggesting municipal voters may be required to show I.D. in order to register to vote.

Protection of Noncitizen Voters At a City Council hearing about Introduction 410 on May 9, 2013, government officials and civil society groups expressed concern that noncitizens would be treated unequally at the polls and suffer harassment if their voter information were leaked to political groups. They also urged the city to prevent noncitizens from accidentally voting in state and federal elections, if these elections appear on the same ballot as local races. Such an accident could result in deportation under federal law. Moreover, noncitizens who later apply for naturalization will be asked whether they have voted in the United States. If they answer yes, then federal immigration officials may deny their applications if the officials do not know that the applicants' voting was legal and limited to the municipal level. The New York City Board of Elections should be prepared to efficiently emit formal letters to federal authorities explaining the circumstances of municipal voting in New York City if inquired by federal officials.

²¹ Supreme Court of the United States. *Ambach, Commissioner of Education of the State of New York, et al. v. Norwick et al.* 441 U.S. 68 (1979). No. 76-808. Argued January 10, 1979; Decided April 17, 1979. Appeal from the United States District Court for the Southern District of New York.

²² Jamin B. Raskin. "Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage." *University of Pennsylvania Law Review*. 141 U. Pa. L. Rev. 1391. April, 1993.

Board of Elections Preparation Also at the hearing on May 9, 2013, Steven Richman, general counsel to the Board of Elections, stated that the Board of Elections will need more time and money to prepare for elections if noncitizens are permitted to vote.²³ He said poll workers will need retraining to understand the new types of ballots, and the Board of Elections will need increased funding to pay for the design and printing of more ballots, expansion of poll sites, retraining of workers, and voter outreach. Richman recommended an extended grace period after passage of the law and an extended interval between general elections and runoffs.

The city may also provide funding for research about the potential increase in voter participation and the political impact of noncitizen voting. Research may also help the Board of Elections learn from its own best practices of the past, since it has already adapted to community school board elections, the Americans with Disabilities Act, the expansion of the NY City Council, the National Voter Registration Act, and addition of recognized languages.

The New York City Campaign Finance Board reiterated many of the Board of Elections concerns, particularly the need to modernize electoral infrastructure. Eric Friedman, the director for external affairs, said the implementation of noncitizen voting will be a challenge when municipal elections coincide with state or federal elections. Poll workers will have to appropriately distinguish municipal voters from the general voting population and navigate distinct ballot types, presenting the possibility of both voter intimidation and vote fraud.²⁴ Friedman also expressed concern about the privacy of noncitizens' personal information, and questioned whether noncitizens would be reluctant to register and participate in elections if they felt the municipal voter rolls were insecure. Moreover, he noted that Introduction 410 did not specify whether the six-month residency requirement had to be consecutive or cumulative, and whether noncitizens would be eligible to vote in New York City even if they also claim the right to vote in their home countries.

Chapter 5

Noncitizen Voting In the US and Abroad

The rise in immigration during the final two decades of the twentieth century led more than 30 towns, cities, counties, and states to consider or pass noncitizen voting in the United States. Those recent efforts are not the first in the nation's experience. The practice has a long history in this country reaching back to the nation's founding (see Box 1). Other nations also have experience with noncitizen voting.

²³ Steven H. Richman. "Re: Int. No. 410 – In relation to allowing immigrants lawfully present in New York City to vote in municipal elections." Testimony before the New York City Council. May 9, 2013.

²⁴ Proven intentional fraud is as rare as lightning striking a person, according to the Brennan Center. Levitt, Justin. "The Truth about Voter Fraud." *Brennan Center for Justice*. New York School of Law, 2007.

Noncitizen Voting in the US

As the following examples indicate, one factor has played a key role in recent efforts: the need for legal or political approval from a higher governmental entity. Also, the examples show that the political context, the presence of a well-coordinated network or coalition from a broad base of organizations, good leadership, and the support of lawmakers influence the success of noncitizen voting initiatives.

Takoma Park, Maryland In Takoma Park, lawyer-activist Jamin Raskin, now a state senator, led a grassroots campaign involving unions, immigrant rights groups, and other organizations in the early 1990s. Following heated public debate and public hearings, the town held a referendum, and a slim majority affirmed their support for a noncitizen voting initiative. The City Council subsequently amended the City Charter.

As a politically progressive community and a sanctuary city for immigrants, Takoma Park decided not to distinguish between documented and undocumented noncitizens for voting purposes.²⁵ The city only asks people to confirm verbally that they are not U.S. citizens, then confirm their identity with a driver's license, state I.D. from the U.S., or state I.D. from their home country, such as a passport. The noncitizens must also confirm residence with something that shows residence, like a utility bill or lease. There is no required residency period before voting, and all voters may register the day of the election.

To avoid complications on election day, Takoma Park holds local elections on off-years or holds separate elections for local ballot measures, and the Board of Elections always separates local ballots from state and federal ballots. Voter rolls for local elections are merged so nobody can distinguish among citizen and noncitizen voters. To periodically clear their voter lists of people who have left the town, the town sends non-forwardable mail to addresses and deregisters voters at addresses that are undeliverable. The city clerk regularly writes official letters on behalf of immigrants to prevent misunderstandings with federal authorities. Fraud is almost a non-issue.²⁶ Voter turnout varies across different wards: as few as 15 noncitizen voters have participated in some wards, whereas the number is roughly equal to citizen voters in other wards.²⁷ Based on an analysis of noncitizen voting in Takoma Park, the non-partisan election reform organization FairVote concluded that noncitizen voting "is not hard to administer and does not cause controversy."²⁸

Rockville, Maryland Rockville's initiative in 2001 failed in part because it occurred in the aftermath of the September 11th terrorist attacks. Nationalism and xenophobia stoked fierce opposition, and few stepped up to support the initiative. Also, the initiative was a top-down

²⁵ Jamin B. Raskin. "Legal Aliens, Local Citizens," 1993.

²⁶ Jesse Carpenter. City Clerk of Takoma Park. Telephone interview with authors, April 5, 2014.

²⁷ Ron Hayduk, *Democracy for All*, 2006.

²⁸ Drew Spencer. "Testimony of FairVote – The Center for Voting and Democracy." Testimony before the New York City Council. May 9, 2013.

move by the mayor, who introduced it to the City Charter Commission with little grassroots support, so it lacked the necessary political support from the population.

Chicago, Illinois Chicago's passage of noncitizen voting in school board elections in 1989 also reaffirmed the importance of the political context. Throughout the 1980s, public awareness of the problems in public schools had already grown and spurred a network of parents, teachers, community organizations, businesses, and politicians focused on school reform. And the 1986 federal immigration law helped lower the stigmatization of immigrants and empower them to participate in society. These conditions were the opposite of those faced by Rockville in the post-September 11th world. Thus, Chicago created a system of school councils to hire and oversee the administration at their local school. Both documented and undocumented noncitizens were permitted to vote and run for office.²⁹

Massachusetts Although well-organized grassroots campaigns succeeded in legalizing noncitizen voting in Amherst and Cambridge in 2003, the Massachusetts state legislature blocked the necessary enabling legislation.³⁰ State Representative Alice Wolf proposed a bill in 2005 to permit municipalities to determine eligibility to vote in local elections, but the bill only had three co-sponsors.³¹ Both Cambridge and Amherst submitted home rule petitions to the state legislature, but the petitions never made it out of committee. As it stands, state approval is the only thing blocking Amherst and Cambridge from implementing noncitizen voting. These cities' versions of noncitizen voting impose a two-year residency period before voting and require noncitizens to declare their intent to naturalize.

San Francisco, California In California, state approval is required to implement noncitizen voting in municipal elections but not in school board elections. Although opponents have claimed that noncitizen voting is illegal even in school board elections, proponents point to several articles in the state constitution, the home rule laws, and a federal appeals court case invoking equal protection.³²

The campaign in favor of noncitizen voting in San Francisco benefitted from the leadership of the Green Party's mayoral candidate, Matt Gonzalez, and a broad coalition of immigrant rights groups. However, the initiatives, which took place in 1996, 2002, 2003, 2004, and 2010, lacked the support of key lawmakers, including Senator Dianne Feinstein, Governor Gray Davis, and the city attorney.³³ Some labor unions and women's groups opposed the initiative, as well, because it included undocumented immigrants. The most recent ballot measure, which took place in 2010 and was called Proposition D, was voted down by almost 55% of voters.

²⁹ Ron Hayduk, *Democracy for All*, 2006.

³⁰ Michael Castagna, Walther Chen, Jen Lawrence, and Stacy McHugh. "Securing Noncitizen Voting Rights: Determining the Feasibility of the Enabling Legislation in Massachusetts." A report for the Massachusetts Immigrant and Refugee Advocacy Coalition. Department of Urban and Environmental Policy and Planning. Tufts University. Spring 2005.

³¹ Michael Castagna, et al. "Securing Noncitizen Voting Rights," 2005.

³² Tara Kini, "Sharing the Vote," 2005.

³³ Ron Hayduk, *Democracy for All*, 2006.

Proposition D would have amended the city charter to allow non-citizens, including the undocumented, to vote in local school board elections if their children attended a San Francisco school. It also proposed a pilot program to test the feasibility of noncitizen voting and had a sunset clause ending the program in 2016, unless extended by a city ordinance. City Controller Ben Rosenfield estimated the additional expenses of such an expansion in the voting rolls to cost about \$152,000 per election.³⁴

Washington, DC The D.C. City Council voted down a noncitizen voting rights initiative in 2004 and will re-consider the issue this year in a bill introduced by Councilmember David Grosso. The bill would allow lawful permanent residents to vote in local elections if they have lived in the city for at least 30 days.³⁵ Any legislation on noncitizen voting will require approval from the U.S. Congress, which can revoke the 1973 Home Rule Charter and regularly intervenes in public affairs in the District of Columbia.

Noncitizen Voting Abroad

Outside the United States, dozens of countries permit noncitizens to vote, but policies vary in inclusiveness. Some countries permit all or most noncitizens to vote at multiple levels of government, whereas others restrict noncitizen voting to certain nationalities or visa types and allow voting only at a lower level of government.³⁶

Some nations have voting rights far more expansive than anything anticipated for the U.S. Uruguay, New Zealand, and Chile fall into this category. These countries allow all or most noncitizens to vote at the local, regional, and federal levels of government. The national government provides this right, not local or provincial governments. However, the residency period varies in length among these three countries. In New Zealand, all permanent residents who have resided at least one year are eligible to register to vote. To become a permanent resident, one needs either to reside in New Zealand for 184 days or more, or to have tax residence status and have received a resident visa application.³⁷ Chile, in contrast, requires five years of residency, and Uruguay imposes a notably lengthy 15-year residency period.

Other countries, including Finland, Greece, Denmark, Sweden Norway and Ireland, allow some non-citizens to vote at the state or local level.³⁸ In Sweden, for example, foreign residents who are not part of the EU or Nordic Passport Union may vote after three years of residency. In

³⁴ Proposition D, Non-Citizen Voting in School Board Elections County of San Francisco, Smartvoter.org, Web, March 25, 2014. <http://www.smartvoter.org/2010/11/02/ca/sf/prop/D/>

³⁵ District of Columbia to Consider Voting Rights Bill for Non-Citizens. Governing: The States and Localities, Web, March 25, 2014, <http://www.governing.com/topics/politics/gov-district-of-columbia-to-consider-a-voting-rights-bill-for-non-citizens.html>

³⁶ David C. Earnest. "Expanding the Electorate: Comparing the Noncitizen Voting Practices of 25 Democracies." *Journal of International Migration and Integration*. Springer Netherlands. March, 2014.

³⁷ Requirements for a permanent resident visa, Immigration New Zealand, Web, April 3, 2014, <http://www.immigration.govt.nz/migrant/stream/alreadyinnz/residents/nextsteps/prvrequirements.htm>

³⁸ David C. Earnest. "Noncitizen Voting Rights: A Survey of an Emerging Democratic Norm." Paper presented at the 2003 annual convention of the American Political Science Association, Philadelphia, PA, August 2003.

Sweden, eligibility to vote is determined by the Swedish Tax Agency. People can appeal the agency's decision up to fifteen days prior to elections. Voting cards are mailed to voters based on their eligibility. The cards are color-coded: yellow for national elections, blue for county, and white for municipal and EU elections. To actually vote, one is required to present the voting card and ID. In Sweden, immigrants have a lower voter turnout rate overall and immigrants who have remained noncitizens vote at a significantly lower rate than immigrants who have become citizens, despite the legalization of noncitizen voting.³⁹

In Belgium, noncitizens with five years of residency are allowed to register to vote in local and national elections, and voting is mandatory for those registered to vote. Registering to vote is done when a foreigner notifies the local municipal authority that they reside in the area (required by Belgium law). Once registered, the foreigner must take an oath of allegiance to the Belgian Constitution and sign the European Convention on Human Rights. Before election day, a voting card is mailed to all registered voters. ID and the voting card are required to cast a ballot. Neglecting to vote incurs a fine unless one shows proof (travel, sickness, etc.) that he or she was unable to vote. Failing to vote in four consecutive elections results in termination of the voter's registration.

Still other countries allow noncitizen voting but restrict it to regional groups, such as the European Union, or specific nationalities or religions. For example, Brazil permits only Portuguese noncitizens to vote, and Israel permits Jewish noncitizens to vote. Other countries with similar policies are Canada, Russia, Japan, and India. Britain grants voting rights for parliamentary elections to Commonwealth citizens, which include "every person who under this Act is a British citizen, a British Dependent Territories citizen, a British Overseas citizen or a British subject".⁴⁰

The advance of global integration and the international nature of many social problems suggest that immigrant populations will grow, assert power, and gain more entitlements, including the right to vote. Indeed, international laws, such as the Maastricht Treaty and the Universal Declaration of Human Rights, and growing pressure from international NGOs may also bolster noncitizen voting in the world. However, national governments still control the laws governing citizenship, and they may further restrict immigrant rights under pressure from organizations motivated by anti-immigrant sentiment.

³⁹ Pieter Bevelander. "Voting Participation of Immigrants in Sweden—a Cohort Analysis of the 2002, 2006 and 2010 Elections." *Journal of International Migration and Integration*. Dordrecht, 2014.

⁴⁰ Heather Lardy. "Citizenship and the Right to Vote." *Oxford Journal of Legal Studies*, Vol. 17, No. 1 (Spring, 1997), pp. 75-100. Web access March 2014: <http://www.jstor.org/stable/764684>

Box 1.**HISTORY OF NONCITIZEN VOTING IN THE U.S.**

Noncitizen voting was common in the U.S. during the nineteenth century. The practice peaked in 1875, when it was legal in 22 states.¹ It then declined in the early twentieth century and ceased in 1928.² Its expansion and decline was influenced by national politics and global migration.³ Noncitizen voting varied from state to state based on whether noncitizens could vote in local, state, or national elections. It also varied according to who could vote; restrictions were established based on national origin, race, gender, literacy, and other qualities.⁴ In general the power to vote was not considered integral to membership in the community, and many citizens – African Americans and women, most markedly – did not have the power to vote.

Period	Key Events	Key Jurisdictions	Key Concepts
Colonial – 1812	National independence	10 state constitutions granted alien suffrage.	Voting rights based on race, gender, and property. Dual citizenship predominated; state citizenship more important than national. ⁵
1812 – 1840	War of 1812	Only one out of eight new states enfranchised noncitizens.	Nationalism, suspicion of foreigners, prejudice against Irish Catholic immigrants.
1840 – 1860s	Civil War, Rapid frontier expansion	Wisconsin, Washington, Kansas, Nebraska, Nevada, Dakota, Wyoming, Oklahoma Territories, Ohio, Illinois, Michigan, Indiana, Maryland, and others.	The “declarant alien” compromise: white male noncitizens could vote if they declared an intention to naturalize. Expanding alien suffrage intended to grow state populations, check the expansion of slavery, and reinforce the dominance of white male property owners; citizenship-based voting would lead to the enfranchisement of women and blacks. ⁶
Post-Civil War	Further frontier expansion	Alabama, Florida, Georgia, Louisiana, South Carolina and Texas.	Political observers started noting the impact of noncitizen votes in the polls.
1880s – 1928	World War I, Immigrant population diversifies	Number of states permitting noncitizen voting dropped from 22 to 11 between 1875 and 1900. By 1928, alien suffrage ceased completely.	The restriction in noncitizen voting paralleled the numerical restrictions on immigration, exemplified by the National Origins Act in 1924. This transition from liberalism to protective nationalism was “epiphenomenal.” ⁷
1980s – Present	Immigration at 800,000 per year in the 1990s after federal reforms.	Takoma Park, Maryland in 1991. ⁸ Los Angeles, San Francisco, and Washington, D.C. in mid-1990s (failed). ⁹ New York City in school board elections from 1968 until 2003.	Many cities need state approval to legalize alien suffrage. This usually requires reforming the state election law. Massachusetts townships have enfranchised aliens but lack state approval.

Notes:

¹ Virginia Harper-Ho. “Noncitizen Voting Rights: The History, the Law and Current Prospects for Change.” *Law and Inequality*. 18 *Law & Ineq.* 271. Summer 2000.

² David C. Earnest. “Noncitizen Voting Rights,” APSA, 2003.

³ David C. Earnest. “Voting Rights for Resident Aliens,” Northeast, 2003.

⁴ David C. Earnest. “Voting Rights for Resident Aliens,” Northeast, 2003.

⁵ Theodore Lowi, et al. *American Government: Power and Purpose*. New York: W.W. Norton & Company, 2011.

⁶ David C. Earnest, “Noncitizen Voting Rights,” APSA, 2003.

⁷ Peter H. Shuck. “The Transformation of Immigration Law.” *Columbia Law Review*, Vol. 84, No. 1 (Jan., 1984). Accessed March 3, 2014: <http://www.istor.org/stable/1122369>

⁸ Jamin B. Raskin, “Legal Aliens, Local Citizens,” 1993.

⁹ David C. Earnest, “Noncitizen Voting Rights,” APSA, 2003.

Box 2**Summary of Arguments For and Against Noncitizen Voting****For****Against***Based on Principle*

Government legitimacy derives from the consent of the governed; all those governed must be able to participate.

Noncitizens are free to participate in many political realms, including unions, schools, and community service.

No taxation without representation. Noncitizens pay taxes, but they cannot vote for the representatives who decide how those taxes are spent.

Noncitizens get a lot for their taxes, including access to infrastructure and services. Also, their overall standard of living in the U.S. is often higher than in their home country.

If a person can serve in the military, he or she should be able to vote.

Noncitizens *may* serve in the military, but it is not mandatory. When they do, they receive expedited naturalization.

Voting rights are a form of political socialization; voters gain knowledge of the political process, key issues, and public debates about the issues.

Political socialization must come before voting rights; It is essential for noncitizens to understand the U.S. political process and culture before becoming citizens and voting.

Citizens are not required to have knowledge of the political process before voting, so why should noncitizens have to?

Citizens have a longer period of political socialization than noncitizens: 18 years of public schooling.

Enfranchisement of noncitizens is the logical next step after women's suffrage and the civil rights movement.

Women and African Americans were *citizens* who did not have voting rights or whose voting rights were curbed. In this case, those potentially enfranchised are not citizens.

It is fundamentally unfair to have a large portion of the population unrepresented.

Not having voting rights is a temporary condition while non-citizens attain citizenship.

Based on Assessment of Social Impact

Voting rights will make noncitizens and their families more engaged in their communities, public schools, and local political issues.

Immigrants are free to engage in public life in many ways without having the right to vote.

Immigration lowers crime:¹ According to NYPD data analyzed by the Americas Society, a one-percent increase in the immigrant population is correlated with 966 fewer crimes in New York City communities.² So, if enfranchisement of noncitizens encourages immigration to the city, crime may drop further.

Citizens should make noncitizens feel welcome in our communities.

Yes, we should. And we can do that by offering free English classes, GED classes, and citizenship classes. But let's not give noncitizens the right to vote.

Based on Assessment of Political Impact

Noncitizen voting is legally permissible in the U.S. and was legal in many states for much of U.S. history.

Noncitizen voting was always an exception to the general rule linking voting to citizenship.

Noncitizens are just as likely to be loyal as citizens are.

Noncitizens will lack loyalty to the U.S. or will have split loyalty.

Evidence of electoral fraud by undocumented noncitizens is weak.

Noncitizen voting would lead to more electoral fraud.

Noncitizens will still have incentive to naturalize even if granted the right to vote: naturalization will gain them access to a U.S. passport, loans and credits for college, and more social services.

Politicians ignore those who cannot vote.

Noncitizen voting will help advance the progressive political agenda and defend working-class interests.

Any increase in the voter population will dilute the vote of the existing voters.

Granting voting rights will encourage immigration, which will sustain economic growth as the baby boomer generation retires. Cracking down on immigrants will have negative economic consequences.³

Notes:

¹ Fiscal Policy Institute. "Working for a Better Life: A Profile of Immigrants in the New York State Economy." New York: Fiscal Policy Institute, 2007.

² Jacob L. Vigdor. "Immigration and New York City: The Contributions of Foreign-Born Americans to New York's Renaissance, 1975-2013." New York: Americas Society/Council on the Americas, April 2014.

³ Fiscal Policy Institute, "Working for a Better Life," 2007.

Noncitizens will have no incentive to naturalize if they are granted the right to vote.

Politicians already pay attention to noncitizens' interests, because noncitizens are community members and potential voters.

Proponents of noncitizen voting disingenuously appeal to moral principle to obscure their real intention: to advance a progressive political agenda and defend working-class interests.

Noncitizens will dilute the votes of citizens.

Uncontrolled immigration causes economic harm including unemployment among the native population.

Appendix

Percent of Noncitizens by New York City Neighborhood

North Corona	53.9	Norwood	23.7
Elmhurst	42.0	Brighton Beach	23.6
Sunset Park East	40.6	Washington Heights North	23.4
Flushing	38.0	Old Astoria	23.4
Elmhurst-Maspeth	37.9	Briarwood-Jamaica Hills	23.3
Corona	35.9	Fresh Meadows-Utopia	22.7
Bushwick North	34.6	Cypress Hills-City Line	22.5
Jackson Heights	32.9	College Point	22.3
East Elmhurst	32.5	Dyker Heights	21.8
Murray Hill	30.8	Melrose South-Mott Haven North	21.7
Jamaica	30.5	Bronxdale	21.6
Woodside	30.2	Belmont	21.6
Hunters Point-Sunnyside-West Maspeth	29.7	Crotona Park East	21.3
Mount Hope	29.6	Pelham Parkway	21.0
East Flushing	29.4	Van Cortlandt Village	21.0
Sunset Park West	29.3	Hamilton Heights	20.9
Washington Heights South	28.4	Kensington-Ocean Parkway	20.6
Ridgewood	27.9	Astoria	20.5
Erasmus	27.5	Prospect Lefferts Gardens-Wingate	20.4
West Concourse	27.5	Woodhaven	20.3
Marble Hill-Inwood	27.3	Rugby-Renssen Village	19.8
Queensboro Hill	26.6	park-cemetery-etc-Bronx	19.7
Richmond Hill	26.3	Mott Haven-Port Morris	19.3
Kingsbridge Heights	25.7	Greenpoint	19.3
Soundview-Bruckner	25.5	Rego Park	18.9
Manhattanville	25.5	Hollis	18.9
University Heights-Morris Heights	25.3	Battery Park City-Lower Manhattan	18.9
Bensonhurst West	25.0	Midtown-Midtown South	18.7
Chinatown	25.0	Queensbridge-Ravenswood-Long Island City	18.7
Flatbush	25.0	Queens Village	18.4
Fordham South	24.9	Bushwick South	18.2
Bensonhurst East	24.6	East Tremont	18.2
East Concourse-Concourse Village	24.5	East Flatbush-Farragut	18.2
West Farms-Bronx River	24.4	Morrisania-Melrose	18.1
Bedford Park-Fordham North	24.1	Crown Heights South	17.9
South Ozone Park	24.1	Longwood	17.6
Highbridge	23.8	Steinway	17.4

Crown Heights North	17.1	Flatlands	13.1
Hunts Point	17.0	Jamaica Estates-Holliswood	13.0
East Harlem South	16.8	Douglas Manor-Douglaston-Little Neck	12.9
Morningside Heights	16.7	East New York	12.8
Bath Beach	16.6	Bay Ridge	12.5
Pomonok-Flushing Heights-Hillcrest	16.5	Central Harlem North-Polo Grounds	12.4
Canarsie	16.5	Lower East Side	12.4
Auburndale	16.4	Glendale	12.4
Van Nest-Morris Park-Westchester Square	16.4	Central Harlem South	12.3
Williamsbridge-Olinville	16.3	Bellerose	12.2
Woodlawn-Wakefield	16.2	Brownsville	12.1
Far Rockaway-Bayswater	16.2	Oakland Gardens	12.1
Port Richmond	16.0	Rikers Island	11.9
Maspeth	15.8	Ocean Hill	11.7
Westchester-Unionport	15.8	Murray Hill-Kips Bay	11.7
Claremont-Bathgate	15.8	West New Brighton-New Brighton-St. George	11.7
Clinton	15.8	Allerton-Pelham Gardens	11.6
Ozone Park	15.8	Seagate-Coney Island	11.5
Springfield Gardens South-Brookville	15.7	Springfield Gardens North	11.4
Grymes Hill-Clifton-Fox Hills	15.7	Hudson Yards-Chelsea-Flat Iron-Union Square	11.4
Baisley Park	15.6	Cambria Heights	11.4
South Jamaica	15.6	Kew Gardens Hills	11.2
Stapleton-Rosebank	15.5	Mariner's Harbor-Arlington-Port Ivory-Graniteville	11.2
East New York (Pennsylvania Ave)	15.5	Yorkville	10.8
East Harlem North	15.3	Stuyvesant Heights	10.8
Madison	15.3	Fort Greene	10.8
Kew Gardens	15.0	Upper West Side	10.7
Turtle Bay-East Midtown	14.7	Laurelton	10.7
Homecrest	14.6	Ocean Parkway South	10.6
Borough Park	14.5	Old Town-Dongan Hills-South Beach	10.5
Lenox Hill-Roosevelt Island	14.5	Spuyten Duyvil-Kingsbridge	10.5
Forest Hills	14.1	Middle Village	10.4
Midwood	13.8	Lincoln Square	10.4
St. Albans	13.7	Grasmere-Arrochar-Ft. Wadsworth	10.3
Eastchester-Edenwald-Baychester	13.6	West Village	10.1
Parkchester	13.5	Windsor Terrace	10.0
East Village	13.5	Bedford	10.0
North Side-South Side	13.4	Clinton Hill	9.7
Bayside-Bayside Hills	13.3	Stuyvesant Town-Cooper Village	9.6
SoHo-TriBeCa-Civic Center-Little Italy	13.2	Brooklyn Heights-Cobble Hill	9.5
East Williamsburg	13.2	Hammels-Arverne-Edgemere	9.5
Gravesend	13.1	Sheepshead Bay-Gerritsen Bch-Manhattan Bch	9.2
Rosedale	13.1	Gramercy	9.2

Glen Oaks-Floral Park-New Hyde Park	9.1
New Dorp-Midland Beach	8.9
Carroll Gardens-Columbia Street-Red Hook	8.9
Prospect Heights	8.9
Park Slope-Gowanus	8.6
DUMBO-Vinegar Hill-Downtn Brooklyn-Boerum Hill	8.5
Ft. Totten-Bay Terrace-Clearview	8.4
Soundview-Castle Hill-Clason Point-Harding Park	8.2
Whitestone	8.2
Co-op City	7.7
Park-Cemetery-etc-Queens	7.5
New Brighton-Silver Lake	7.3
North Riverdale-Fieldston-Riverdale	7.2
Upper East Side-Carnegie Hill	7.1
New Springville-Bloomfield-Travis	6.4
Todt Hill-Emerson Hill-Heartland Vlg-Lighthouse Hill	6.3
Park-Cemetery-etc-Manhattan	6.0
West Brighton	6.0
Pelham Bay-Country Club-City Island	5.7
Georgetown-Marine Pk-Bergen Beach-Mill Basin	5.5
Schuylerville-Throgs Neck-Edgewater Park	5.5
Breezy Pt-Belle Harbor-Rockaway Pk-Broad Chnl	5.1
Lindenwood-Howard Beach	5.0
Starrett City	4.6
Westerleigh	4.4
Williamsburg	3.8
Oakwood-Oakwood Beach	3.2
Charleston-Richmond Valley-Tottenville	3.1
Rossville-Woodrow	2.9
Arden Heights	2.8
Great Kills	2.8
Annadale-Huguenot-Prince's Bay-Eltingville	2.4
Park-cemetery-etc-Brooklyn	1.7

Reader's Notes