

June 27, 2008

City Council President Gary Bolton
City of Fremont
400 E. Military Avenue
Fremont, NE 68025

RE: Proposed ordinance to prohibit harboring, hiring, or renting to “illegal immigrants” in the City of Fremont

Dear Council President Bolton and Council Members,

We are writing to express our concern about the proposed ordinance to prohibit harboring, hiring, or renting to “illegal immigrants” in the City of Fremont and to share some information about why these types of ordinances are a bad idea. Other municipalities across the country have passed similar ordinances only to find that they are preempted by federal law, harm public safety, divide the community, and are very costly to implement and defend.

Nebraska Appleseed Center for Law in the Public Interest is a non-partisan, non-profit, public interest law project dedicated to equal justice for all Nebraskans. Appleseed seeks to find common ground and practical solutions to strengthen Nebraska’s communities. Our programs focus on low-income families, children in the foster care system, health care and new immigrants. We have successfully advocated for the rights of thousands of Nebraskans in the courts, and we have worked with thousands more community members across the state to create positive public policies. Appleseed’s Immigrant Integration and Civic Participation Program works to address immigration policy at the federal level and integration policy at the state and local level, as well as a variety of related issues – such as access to mainstream financial services and meatpacking worker health and safety – that impact community integration and Nebraska’s future.

We would like to provide a quick summary of some of the key problems ordinances like the Fremont proposal have created in other parts of the country, and we are happy to discuss the matter further or help search for additional information if you find you have additional questions:

First, this ordinance would be preempted under federal law. The preemption doctrine, derived from the Supremacy Clause of the United States Constitution, has been interpreted by the U.S. Supreme Court to invalidate state or local laws that “interfere with or are contrary to federal law.” *Gibbons v. Ogden*, 22 U.S. 1, 211 (1824). Where Congress has explicitly provided that federal law is to be exclusive in a given field, states cannot regulate in the field, even if their efforts compliment or further federal objectives. *Morales v. TWA*, 504 U.S. 374, 387 (1992). Since the regulation of immigration is a federal matter, state and local laws that attempt to regulate immigration are preempted. For example, the Supreme Court found in *De Canas v. Bica* that only the federal government may issue a “regulation of immigration,” which the Supreme Court has defined as “a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.” *De*

Canas v. Bica, 424 U.S. 351, 96 S.Ct. 933, 47 L.Ed.2d 43 (1976). Id. at 355. In this case, the proposed Fremont ordinance would unlawfully attempt to regulate immigration because private actors (landlords and employers) and city officials would determine who was lawfully present, instead of federal officials.

Recently, anti-immigrant municipal ordinances in Pennsylvania and Texas similar to the one proposed here, were struck down as unconstitutional because they were preempted by federal law and also violated the right of due process. In 2006, the city of Hazleton, Pennsylvania (population 23,000) passed an ordinance which made it unlawful for businesses to hire, or for landlords to rent to, undocumented immigrants. In July 2007, a federal court ruled that the ordinances were preempted by federal law and prohibited the town of Hazleton from enforcing them. *Lozano et al v. City of Hazelton*, 496 F.Supp.2d 477, 544-45 (M.D. Pa. 2007), appeal pending, --- F.3d --- (3rd Cir. 2008). The court rejected Hazleton's argument that a state or local municipality can properly impose any rule they choose on landlords and employers with regard to hiring or renting to undocumented individuals. *Lozano* at 519.

Similarly, the town of Farmer's Branch, Texas (population 27,500) in 2006 passed a local ordinance imposing immigration status verification requirements on landlords. In May 2008, a federal court permanently enjoined the ordinance holding that it was an impermissible local regulation of immigration and thus preempted. *Villas at Parkside Partners v. City of Farmers Branch*, 2008 WL 2201980 (N.D. Tex. May 28, 2008). Because the ordinance "burdens private citizens and city officials with making immigration status decisions based upon a scheme that does not adopt federal immigration standards," it was preempted. *Villas at Parkside Partners*, at 9.

Therefore, based upon the relevant case law, an ordinance such as the one proposed here would very likely be struck down under the preemption clause of the U.S. Constitution.

Involving local police in federal immigration enforcement is dangerous policy. Asking local police to don a second hat as federal immigration officers has dangerous ramifications for the public safety of all community members. The defining element of community policing is the development of relationships between police and their communities—many of which, like Fremont, include immigrants. Police officers rely upon these relationships to obtain information critical to the prevention and investigation of crime. When some community members fear the police, it becomes less likely that crimes will be reported, or that witnesses will come forward – putting us all at greater risk. For this reason, this type of policy is widely opposed by major law enforcement organizations, including the International Association of Chiefs of Police and the Major Cities Police Chiefs Association. Dozens of major cities and groups from across the ideological spectrum – ranging from the National League of Cities to the ACLU to Americans for Tax Reform – also oppose these programs.

The International Association of Chiefs of Police — the world's oldest and largest association of law-enforcement executives, publicly expressed concern that measures such as the proposed ordinance would have a "chilling effect" on the willingness of legal and undocumented immigrants "[to report] criminal activity or assist police in criminal investigations." The Major Cities Chiefs Association — an organization composed of chiefs

of the sixty-four largest police departments in the United States and Canada — has also articulated this concern: “Such a divide between the local police and immigrant groups would . . . eliminate the potential for assistance from immigrants in solving crimes or preventing future terrorist acts.”

The proposed Fremont ordinance would inhibit cooperation between police and immigrant communities by involving the Fremont Police Department in the investigation of complaints against allegedly undocumented immigrants and their employers and landlords, as well as the verification of individuals’ immigration status. Communities that have signed up for these initiatives are also finding it much more expensive than anticipated (see below). Appleseed recently released a guide to the issue of local police and federal immigration enforcement which describes how local police enforcement of immigration law jeopardizes public safety; strains already limited resources of local law enforcement; undermines police efforts to build trust with immigrant communities; impedes anti-terrorism efforts; risks the safety and lives of victims of domestic violence, trafficking and other crimes; and heightens the risk of racial profiling. We are including a copy of that guide with this letter.

Ordinances such as this divide the community. While this proposed ordinance may target undocumented immigrants, all immigrants and minorities—including citizens, legal residents, and community members born in the U.S.—suffer from the discrimination that inevitably flow from these ordinances. This proposed ordinance will effectively empower ordinary citizens to enforce federal immigration laws, but do not give them any tools or guidance for doing so. Consequently, even well-intentioned citizens may turn to crude proxies for immigration status, which could result in discrimination against minorities and all immigrants, including citizens and legal residents, as well as individuals who are perceived to be “foreign-looking” or “foreign-sounding.” Without reliable guides for determining an individual’s immigration status, landlords and business owners may suspect an individual because of, say, her dark skin or Spanish accent, or because foreign music can be heard from the speakers of her car.

This is not an ungrounded fear. Untrained local police relied on precisely these proxies during the Chandler, Arizona immigration raids, rounding up scores of legal residents because they “looked Mexican.” The Chandler case illustrates that “[r]acial profiling is a routine aspect of immigration law enforcement.” As law-enforcement associations have pointed out, “[p]olice officers, who receive no training in the intricacies of immigration law, are bound to make mistakes...” As civilians receive even less training than police, such instances of racial profiling may occur under ordinances such as the one proposed here in Fremont.

Moreover, threatened with strict sanctions, business owners and landlords may altogether refuse to rent to or hire individuals they suspect are undocumented immigrants. Such patterns of behavior are well-documented. Following the passage of the Immigration Reform and Control Act of 1986 (IRCA), which attached civil and criminal sanctions to the hiring of unauthorized workers, a Government Accountability Office study found that 10 percent of employers reported that they no longer hired people with an accent or a foreign appearance. A decision not to hire an individual based on perceived origin or ethnicity is clearly illegal,

but as experience under IRCA shows, businesses may choose to risk potential liability for discriminatory conduct rather than bear the costs of non-compliance with local ordinances. Based on all of these factors, the city council should reject this proposed ordinance and not risk potentially dividing the community and increasing discrimination against minorities and immigrants.

This type of ordinance is expensive for the local community to implement and defend in court. Precious city funds that would be spent implementing and defending this ordinance against a certain legal challenge would be much better invested in improving the quality of life for all residents of Fremont. Other municipalities that have passed similar anti-immigrant ordinances have had to expend significant amounts of money to implement and defend these ordinances against legal challenges. To implement an immigration ordinance, a town has to extensively train all employees who would be tasked with checking the immigration status of each and every individual who is seeking that service, pay for training and other resources associated with police enforcing immigration laws, set up commissions to make sure the laws were not discriminating against minorities, among other very costly measures. Mayors and other city or county officials, who have weighed the costs of the implementation, realize that these ordinances are likely to bankrupt the town. In Farmer's Branch, Texas, former Mayor Dave Blair stated, "It's not because I'm in favor of illegal immigration. That is not the question here. The question is what is this ordinance doing ... and it's very little. But the damage is very, very great." In October 2007, Prince William County, Virginia county supervisors were unwilling to move forward with the police enforcement portion of the immigration law after they found that the price tag would be a minimum of \$14 million for five years. "Immigration isn't the only issue in this county," said the board's vice chairman Martin E. Nohe (R-Coles). "Paying for all this is going to be difficult."

Defending such ordinances from legal challenge is also extremely costly. For example, in the case of Hazleton, Pennsylvania, discussed above, the city's insurance carrier is asking a federal judge to rule that it is not responsible for nearly \$2.4 million in attorney fees being sought by the plaintiffs who successfully challenged the city's anti-immigrant ordinance. The insurer will not pay for the legal fees or the appeal of the case, so the taxpayers of Hazleton will be left to foot the bill for a case that is likely to lose in court. In July 2006, the town council of Riverside Township, New Jersey (population 8000), passed an anti-immigrant ordinance that would have penalized landlords and employers who rent to or hire undocumented individuals. Although it was repealed last year, the city spent \$82,000 in attorney fees to defend the ordinance, forcing the delay of road-improvement projects and repairs to City Hall.

Based on the experiences of other local governments, the Fremont City Council should not risk the city's financial stability, public safety, and the creation of ugly community divisiveness by passing this ordinance which would prove to be extremely costly to both implement and defend.

If you would like to discuss this in more detail, please feel free to contact me at 402-438-8853 or npflanz@neappleseed.org.

Sincerely,

Norman Pflanz
Staff Attorney
Nebraska Appleseed Center for Law in the Public Interest