Immigration Ordinance Fact Sheet June 2, 2010

NOTE: This document is not intended to be a comprehensive analysis of everything that may relate to the proposed immigration ordinance that is on the June 21, 2010 special election ballot. This document represents responses to the most frequently asked questions heard by City officials and staff.

This list of questions was submitted to the Nebraska Accountability and Disclosure Commission (ADC). The commission is unable to provide an opinion without full deliberation. The commission does appreciate that the City is sensitive about the issue of handling this matter properly and our call to the commission.

Since insufficient time remains before the election for the commission to deliberate on these questions, a staff member listened to some of the questions and responses. The City was also provided with two of the commission's Advisory Opinions⁽³⁰⁾⁽³¹⁾ for our consideration.

In our opinion we have made good faith efforts to follow the guidance in the ADC's Advisory Opinions and staff comments. As a result of these efforts, the City Administrator is providing the following questions and answers relating to the upcoming election. As previously noted, City staff, the Mayor, and the City Council will not advocate for or against the ordinance using City time, facilities, or equipment.

1. Are there any other cities that have considered ordinances similar to the proposed ordinance here?⁽¹⁾

Yes. A list of cities that have considered ordinances and the actions taken was compiled by a Lexis search performed by an outside law firm in 2008⁽²⁾. There are two other ordinances in Farmers Branch, Texas, (3) and Hazleton, Pennsylvania⁽⁴⁾. Both have been appealed to the appropriate Circuit Court. (16)(18)

2. Has an ordinance similar to the one proposed in Fremont ever been enforced successfully?

Not that we are aware of. Enforcement of ordinances containing harboring and/or renting provisions on the attached list⁽²⁾ has been stopped by the federal courts or at the local level⁽²⁾⁽⁹⁾⁽¹⁰⁾. An ordinance containing hiring provisions was allowed to take effect in Valley Park, Missouri⁽⁵⁾. It does not include the harboring and renting provisions that are a part of the proposed Fremont ordinance. State laws regulating hiring have gone into effect on a statewide basis in states such as Arizona⁽⁶⁾. Nebraska has a state law regulating hiring⁽⁷⁾ that is currently in effect and is used in the City of Fremont⁽⁸⁾.

3. What happened after Farmers Branch and Hazleton were prohibited from enforcing their ordinances?

Injunctions enjoining Farmers Branch⁽⁹⁾ and Hazleton⁽¹⁰⁾ from enforcing their ordinances were issued by federal courts after the lawsuits were filed. After hearings the injunctions were made permanent. These two cities have appealed the court decisions⁽¹¹⁾⁽¹²⁾.

4. What happened in the lawsuits?

Each city was the defendant in each court case. Opponents of the ordinances were known as the plaintiffs. In both of those cases the Federal district courts ruled in favor of the plaintiffs⁽¹¹⁾⁽¹²⁾. In each case the cities (defendants) appealed to the Federal appeals (circuit) courts in each area. In each case the matter is still "on appeal". No ruling has been given by either appeals court as of May 26, 2010⁽¹⁶⁾⁽¹⁸⁾.

5. How long has the litigation taken so far?

The Hazleton case has been going on since $2006^{(13)}$. The Farmers Branch case has also been going on since $2006^{(14)}$. Both are continuing. The Valley Park case took about two years⁽¹⁵⁾.

6. How much have these cities spent defending these ordinances?

Farmers Branch's fees to defend the case are about \$3,200,000 to date (an average of \$800,000 per year)⁽¹⁶⁾. Its insurance carrier denied insurance coverage for the case⁽¹⁷⁾.

Hazleton's fees to defend the case are about \$5,000,000 to date (an average of \$1,250,000 per year). Hazleton has paid \$400,000 of this amount, and is suing its insurance carrier to pay the other \$4,600,000. Its insurance carrier also denied coverage⁽¹⁸⁾.

Valley Park's fees to defend the case were about \$270,000⁽¹⁹⁾ (an average of \$135,000 per year).

7. Will Fremont's insurance carrier cover Fremont for any lawsuit if someone sues Fremont?

This is a complicated question. Fremont is part of a risk sharing pool. Several cities in the State have banded together in a sort of "co-op" arrangement. The pool (known as LARM – League Association of Risk Management) buys "stop-loss" coverage that pays very large claims. Smaller claims are paid by the members of the pool. Stop-loss coverage starts at amounts over \$300,000.

We have asked LARM if we will be covered. LARM's director has informed us that stoploss carriers look at lawsuits in much the same way as full-coverage carriers. Every insurance policy (even a stop-loss policy) has "coverage exclusions" (things that won't be covered).

One common exclusion is for something determined to be illegal. Insurers will err on the side of not covering a claim. This is essentially what happened in Hazleton and Farmers Branch⁽²⁰⁾.

Although there is no way to know whether we will be covered by insurance at this time, we do know that Farmers Branch and Hazleton were denied coverage⁽¹⁷⁾⁽¹⁸⁾. We were unable to determine this information for Valley Park.

8. Are there any other amounts that Farmers Branch or Hazleton paid for litigation?

The Courts awarded the plaintiffs \$950,000 in the first case involving Farmers Branch. The Court ordered Farmers Branch to pay the plaintiffs' legal fees. The City settled with the plaintiffs for $$475,000^{(16)}$.

In the second Farmers Branch case the Court ordered the City to pay \$2,100,000 in plaintiffs' legal fees. The plaintiffs are not willing to negotiate and Farmers Branch is appealing the judgment⁽¹⁶⁾.

In the Hazleton case the district court deferred the decision awarding legal fees to the appeals court. Since this is still a subject of litigation Hazleton did not disclose the amount of the plaintiffs' demands⁽¹⁸⁾. Given the costs in Farmers Branch and the similarity in defendant's fees, our estimate is that the amount is probably at least $\$3,000,000^{(21)}$.

9. Would Fremont have to pay the plaintiffs' fees?

There is no way to know whether the court will award plaintiff's fees other than to look at the experiences of other cities. Valley Park removed the harboring and renting provisions and did not have to pay plaintiffs' fees⁽¹⁵⁾. Hazleton is still the subject of litigation⁽¹⁸⁾. Farmers Branch has been ordered to pay plaintiffs' fees twice⁽¹⁶⁾.

10. I heard that lawyers will defend the City at no charge. If this is so, why did Hazleton, Farmers Branch, and Valley Park have to pay to defend themselves?

The City received an e-mail from the Mountain States Legal Foundation⁽³³⁾ in July 2008 stating that attorneys would defend the City "pro bono" (at no charge). However, Farmers Branch responded that it solicited proposals from interested law firms. No one responded offering to defend that city at no charge. We were also advised that since there is a possibility that we will have to pay plaintiffs' legal fees if we lose in court, we should hire "the best". Farmers Branch also noted we should remember that, "you get what you pay for"⁽¹⁶⁾.

The City's administration will of course solicit requests for proposals if litigation is necessary. In that event the City intends to submit a request for proposal to the Mountain States Legal Foundation.

11. I heard that people will contribute money to Fremont so that we will not have to pay any legal fees from the city's normal funds. Is that so?

Hazleton established a legal defense fund. Over the past 4 years it received \$400,000 in contributions. Most of the contributions were received in 2006 and 2007⁽¹⁸⁾. Not much has come in during the last 3 years. This is \$4,600,000 less than the \$5 million in legal defense fees Hazleton has accumulated so far.

In federal court successful plaintiffs are often awarded legal fees. In previous cases a successful plaintiff was defined as the one who prevails on any particular cause of action. This is not necessarily on the whole case, just on one portion of the case. Those fees are assessed against the defendant. They are not paid by the court⁽²²⁾.

12. So who are the plaintiffs in these cases?

Each city was sued by individual citizens. These citizens can include tenants, landlords, minorities, etc⁽¹⁶⁾⁽¹⁸⁾. Fremont has been contacted by the ACLU, MALDEF, and Project Appleseed⁽²²⁾. Some of these organizations have participated in litigation involving other cities.

13. What other costs occurred in other cities?

We have been advised to plan for additional police overtime before, during, and/or after the election. Groups that showed up in Farmers Branch (ACLU, unions, minority groups, the Ku Klux Klan, the American Nazi Party, etc) do not see eye to eye with each other and a police presence was necessary⁽¹⁶⁾.

Other large costs related to legal depositions and discovery. Large outlays for computer software were also needed. Every piece of information will need to be reviewed by an attorney to see if any information needs to be redacted⁽¹⁶⁾⁽¹⁸⁾.

14. What is Fremont doing to plan for additional costs this year?

In this year's budget (for the 12 months ending September 30, 2010) the City is leaving several vacant positions open. The salary savings will be used to cover any police overtime needed, the costs of holding the special election, and any additional legal costs that might occur in this fiscal year⁽²³⁾. The City has a long history of sound fiscal budgeting and we plan to continue that practice.

15. What is Fremont doing to plan for costs in future years?

The best estimates for us of future costs appear to be the costs incurred in Hazleton and Farmers Branch. Both are very close to Fremont's size. Valley Park is a much smaller city and chose to take a different litigation path as noted above. The budget team is going on the assumption that total costs (legal fees, overtime, computer software, etc) will average \$1,000,000 per year if the ordinance passes⁽²³⁾.

This money can be raised in three ways:

- Increase taxes and fees (revenues)
- Cut services (expenditures)
- A combination of increased revenues and decreased expenditures

16. What effect does a \$1,000,000 increase in taxes and fees have on residents?

Since most of our fees are comparable with neighboring cities, revenue from that source is limited. In order to raise \$1,000,000 in property taxes, City staff will propose increasing the mill levy by about 7.7 mills (the final number will depend on the State's assessment office in Dodge County). This increases our general mill levy from about 32 mills to 39.7 mills (an increase of about 24%)⁽²⁴⁾.

As a guideline this is an increase of about \$154 in property taxes per year on a \$200,000 house⁽²⁵⁾.

17. What effect does a \$1,000,000 million cut in expenditures have on residents?

If the City must pay for legal services and if contributions from private sources are not sufficient, this litigation would need to be paid from the City's General Fund. Money received in other funds is generally restricted for certain purposes (street improvements, utility extensions, public safety, capital spending, etc). The General Fund budget is largely made up of personnel related costs. The State of Nebraska controls the amounts paid for salaries and benefits through the Commission on Industrial Relations.

Since personnel costs are the largest part of the General Fund, and since we cannot legally reduce wages and benefits below comparability, the only significant way to cut the budget is by cutting staff and services⁽²³⁾.

The four biggest departments (Police, Fire, Parks and Recreation, and the Library) employ 52, 30, 48, and 15 employees respectively. Only 19 Parks and Recreation employees and only 10 Library employees are full time, so most of these wages are much lower than the average. Police and Fire employees are paid at much higher salaries on average⁽²⁶⁾.

The other departments in the General Fund have only 15 employees when all are taken together. The budget team estimates that we would have to cut 12-25 out of 160 full-time equivalents, depending on which employees are cut⁽²⁷⁾.

18. What if we did a combination of tax increases and expenditure cuts?

One possibility might be a 3.8 mill levy increase (\$500,000 per year or \$77 per year on a \$200,000 house) combined with cutting 6 - 12 full-time equivalents⁽²⁸⁾.

19. I've heard that this ordinance applies to businesses located outside the Fremont City limits. Is that true?

No. The ordinance cannot be used to enforce hiring provisions outside of the City's boundaries⁽²²⁾. Businesses located outside the City limits include, but are not limited to:

Americold Logistics, Fremont Beef, Hormel, Jayhawk Box, Kriz Davis, and Land o' Lakes/Purina Feed⁽²⁹⁾.

20. I've heard that the ordinance applies to people renting outside the Fremont City limits. Is that true?

No. The ordinance cannot be used to enforce renting or harboring provisions outside the City's boundaries⁽²²⁾. In addition, enforcement of ordinances containing harboring and/or renting provisions has been stopped by the federal courts or at the local level⁽²⁾⁽⁹⁾⁽¹⁰⁾. Residential areas outside the City limits include, but are not limited to:

Bradbury, Lake Ventura, Meadowbrook, Summit, Valley View, and the Village of Inglewood ⁽²⁹⁾.

21. What does the proposed ordinance say?

A copy of the proposed ordinance is available on the City's website, at City Hall, and at the Library⁽³²⁾. This is an 8 page ordinance that establishes a new section of the Fremont Municipal Code (§6-428).

Footnotes:

- Note: This information dates from 2008. Additional cities may have considered similar ordinances since then. The information does not include counties or states. Since Fremont is a city we restricted our research to ordinances proposed or in effect in other cities.
- The list compiled by the Lexis search in 2008 is attached.
- Farmers Branch Ordinance No 2903 or http://www.ci.farmers-branch.tx.us/sites/default/files/Ordinance%20No%202903.pdf.
 Farmers Branch Ordinance No 2952 or http://www.ci.farmers-branch.tx.us/sites/default/files/Ordinance%20No%202952.pdf.
- Hazleton Ordinance No 2006-18 or http://www.smalltowndefenders.com/090806/2006-18%20 Illegal%20Alien%20Immigration%20Relief%20Act.pdf.
 Hazleton Ordinance No 2006-13 or http://www.smalltowndefenders.com/090806/2006-13%20 Landlord%20Tenant%20Ordinance.pdf.
- Valley Park Ordinance No 1708 or

 http://www.valleyparkmo.org/docs/Ordinances/Ordinance%201708.pdf.

 Valley Park No 1722 or http://www.valleyparkmo.org/docs/Ordinances/Ordinance1722.pdf.

 Valley Park No 1724 or http://www.valleyparkmo.org/docs/Ordinances/ordinance%201724.pdf.

 Valley Park Ordinance No 1732 or http://www.valleyparkmo.org/docs/Ordinances/ORD 1732.pdf.
- (6) Legal Arizona Workers Act, Ariz.Rev.Stat §§23-211 to 23-216
- (7) §4-106 et seq., Nebraska Revised Statutes
- The City of Fremont complies with all aspects of NRS §4-106 et seq.
- (9) See, e.g., UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION, Case 3:08-cv-01615-O http://www.maldef.org/assets/pdf/ordinance2952 complaint091208.pdf
- See, e.g., UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF PENNSYLVANIA, Case 3:06-cv-01586-JMM

 http://www.aclu.org/files/pdfs/immigrants/hazleton_decision.pdf
- Dallas Morning News-Farmers Branch votes to appeal decision striking down rental ordinance or http://www.dallasnews.com/sharedcontent/dws/news/city/carrollton/stories/042110dnmetfbappeal.3e
 0268b.html
- http://smalltowndefenders.com/node
- http://www.clearinghouse.net/chDocs/public/IM-PA-0001-0004.pdfhttp://www.smalltowndefenders.com/node/10
- http://www.msnbc.msn.com/id/15686734/
- Phone conversation with city official in the Public Works Department, City of Valley Park, MO, May 14, 2010.
- Phone conversation with city official in the Finance Department, City of Farmers Branch, TX, May 3, 2010.
- Phone conversation with city official in the Finance Department, City of Farmers Branch, TX, May 26, 2010.
- Phone conversation with city official in the Administration Department, City of Hazleton, PA, May 10, 2010.

- http://www.nytimes.com/2009/07/21/us/21lawyer.html
- Phone conversation with risk management official, League Association of Risk Management, May 13, 2010.
- Estimate by Fremont's budget team based on the court awards to plaintiffs in the Farmers Branch case (\$950,000 and \$2,100,000), compared with defense costs in Farmers Branch (\$3,200,000) and defense costs in Hazleton (\$5,000,000) all discussed elsewhere in this fact sheet or in these footnotes.
- ⁽²²⁾ Conversation with Fremont City Attorney, May 17, 2010.
- Budget team discussion with Fremont department heads (government side), in a meeting preparing for the 2010/11 fiscal year budget, May 17, 2010. The \$1,000,000 figure is based on the actual history of Farmers Branch (\$800,000 per year average for 4 years), and Hazleton (\$1,250,000 per year average for 4 years).
- From City of Fremont, Nebraska, 2009-10 Budget Book, page 45. Total valuation = \$1,301,628,848. Calculation: $1,000,000/1,301,628,848 \times 100 = .07683 = 7.683$ mills. Current mill levy (page 45) (excluding bonded debt) = .319531 = 31.9531 mills.
- From footnote $^{(24)}$ above: .07683 x 200,000 = \$153.66.
- (26) From City of Fremont, Nebraska, 2009-10 Budget Book, pages 79, 87, 103, 107, 115, 121, and 129.
- The number 12 assumes that the City can cut staff positions where salaries, FICA taxes, pensions, health and dental insurance, and other benefits total an average of: 1,000,000/12 = \$83,333 per employee.

 The number 25 assumes eliminating positions averaging: 1,000,000/25 = \$40,000 per employee.

 If the ballot issue passes, the actual proposal submitted to the Mayor and City Council will most likely vary between these two calculations.
- The mill levy calculation is consistent with footnote (24) above:

 $500,000/1,301,628,848 \times 100 = .03841 = 3.841 \text{ mills}.$

Tax calculation: $.03841 \times 200,000 = 76.82 .

Staffing calculations: 500,000/6 = \$83,333 per employee.

500,000/12 = \$41,667 per employee.

- (29) Map of City boundaries provided by the Fremont Engineering Office. This map was compared with the physical location of various businesses, the Village of Inglewood, and various subdivisions.
- http://nadc.nol.org/AdvisoryOpinions/OPINION%20128.htm
- http://nadc.nol.org/AdvisoryOpinions/OPINION%20143.htm
- (32) http://www.fremontne.gov
- (33) Information on this organization is available at http://www.mountainstateslegal.org/.