PROPOSED ORDINANCE NO. 5165

AN ORDINANCE OF THE CITY OF FREMONT, NEBRASKA, AMENDING THE FREMONT MUNICIPAL CODE, ORDINANCE NO 3139 TO PROHIBIT THE HARBORING OF ILLEGAL ALIENS OR HIRING OF UNAUTHORIZED ALIENS, PROVIDING DEFINITIONS, MAKING PROVISION FOR OCCUPANCY LICENSES, PROVIDING JUDICIAL PROCESS, REPEALING CONFLICTING PROVISIONS, AND ESTABLISHING AN EFFECTIVE DATE FOR THIS ORDINANCE.

WHEREAS, Federal law requires that certain conditions be met before an alien may be authorized to be lawfully present in the United States. Those conditions are found principally at United States Code Title 8, Section 1101, et. seq., and;

WHEREAS, United States Code Title 8, Section 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of the federal immigration crime of harboring, and;

WHEREAS, United States Code Title 8, Section 1324a prohibits the knowing employment of unauthorized aliens; and United States Code Title 8, Section 1324a(h)(2) permits state and local governments to suspend the businesslicenses of those who employ unauthorized aliens, and;

WHEREAS, The presence of illegal aliens places a fiscal burden on the City, increasing the demand for, and cost of, public benefits and services, and;

WHEREAS, Crimes committed by illegal aliens in the City harm the health, safety and welfare of U.S. citizens and aliens lawfully present in the United States, and;

WHEREAS, The employment of unauthorized aliens in the City displaces authorized United States workers and adversely affects their wages, and;

WHEREAS, In 1996 Congress amended the Immigration and Nationality Act to require the federal government to verif the immigration status of any alien upon the request of a state, county, or municipality, for any purpose authorize(by law. United States Code Title 8, Section 1373(c). The federal government has established several systems t(accomplish this obligation, including the Systematic Alien Verification for Entitlements (SAVE) Program and th(Law Enforcement Support Center (LESC), and;

WHEREAS, This Ordinance is in harmony with the congressional objectives of prohibiting the knowing harboring of illegal aliens and prohibiting the knowing employment of unauthorized aliens, and;

WHEREAS, The Secretary of the U.S. Department of Homeland Security has specifically praised and encouraged those states and localities that require employers to participate in the E-Verify Program, and;

WHEREAS, The City of Fremont shall not construe this ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.

BE IT THEREFORE ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FREMONT, NEBRASKA:

SECTION 1. That a new section §6-428 be added to the Fremont Municipal Code Ordinance No. 3139 to provide as follows:

§6-428 Harboring or Hiring Illegal Aliens, Prohibited.

1. DEFINITIONS: For the purposes of this Ordinance, the following terms and phrases shall have the meanings ascribed to them herein, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

A. *Illegal alien* means an alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, Section 1101 et seq. The City shall not conclude that an individual is an illegal alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United State Code Title 8, Section 1373(c), such individual's immigration status.

B. *Unlawfully present in the United States* means unlawfully present in the United States according to the terms of United States Code Title 8, Section 1101 et seq. The City shall not conclude that an alien is unlawfully present in the United States unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, Section 1373 (c), such alien's immigration status.

Dwelling unit means a single residential unit with living facilities for one or more persons, including space for living, sleeping, eating, cooking, bathing and sanitation, whether furnished or unfurnished, that is let or rented for valuable consideration. There may be more than one rental unit on a premise. In a multifamily residence or apartment building, each residential unit or apartment constitutes a separate dwelling unit. The term dwelling unit does not include a dormitory room at a postsecondary educational institution, a room at a shelter for the homeless or the abused, or a hotel room.

D, ***Lessor*** means a person who leases or rents a dwelling unit as, or on behalf of, a landlord.

E. *Occupant* means a person, age 18 or older, who resides at a dwelling unit. A temporary guest of an occupant is not an occupant for the purposes of this ordinance.

F. *Unauthorized alien* means an alien who does not have authorization of employment in the United States, as defined by United States Code Title 8, Section 1324a(h)(3). The City shall not conclude that an individual is an unauthorized alien unless and until an authorized representative of the City has verified with the federal government, pursuant to United States Code Title 8, Section 1373(c), such individual's lack of authorization of employment in the United States.

G. *Business entity* means any person, group of persons, partnership or corporation that engages in any

activity, enterprise, profession or occupation for financial gain, benefit, or livelihood, and shall include all such activities, enterprises, professions, or occupations, whether preformed in one or more establishments by one or more corporate or other organizational units, including departments or establishments operated through leasing arrangements, whether for profit or not-for-profit. The term business entity shall include but not be limited to contractors, subcontractors, self-employed individuals, partnerships, and corporations. The term business entity shall include both business entities that are required to obtain a license or permit to conduct business in the City of Fremont, and businesses that are not required to obtain a license or permit to conduct business in the City of Fremont.

H. *Work* means any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.

1. *E-Verify Program* means the electronic verification of employment authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, United States Code Title 8, Section 1324a, and operated by the United States Department of Homeland Security (or a successor program established by the federal government).

J. Systematic Alien Verification for Entitlements (SAVE) Program means the electronic program created pursuant to the Immigration Reform and Control Act of 1986 (!RCA), P.L. 99-603, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104193, which enables a federal, state, or local government entity to confirm with the United States Department of Homeland Security an alien's immigration status (or a surnessor program or method of confirmation of immigration status established by the federal government).

K. *Business license* means any license, permit, occupation tax registration, business registration, or registration certification issued to a business entity by the City, including but not limited to all such licenses and permits described under the Fremont Municipal Code, Ordinance No. 3139.

L. ***City*** means the City of Fremont, Nebraska.

2. HARBORING ILLEGAL ALIENS:

A. It is unlawful for any person or business entity that owns a dwelling unit in the City to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

1. For the purpose of this section, to let, lease, or rent a dwelling unit to an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.

2. Condition of lease. An occupant may not enter into a contract for the rental or lease of a dwelling unit in the City unless the occupant is either a U.S. citizen or national, or an alien lawfully present in the United States according to the terms of United States Code Title 8, Section 1101 et seq. An occupant who is neither a U.S. citizen or national, nor an alien lawfully present in the United States, who enters into such a contract shall be deemed to have breached a condition of the lease. An occupant who is an alien who

subsequent to the beginning of his lease becomes unlawfully present in the United States shall be deemed to have breached a condition of the lease.

3. Prospective Application Only. This Ordinance shall apply only to contracts to let, lease, or rent dwelling units that are entered into and tenancies that begin after the date that the Ordinance becomes effective.

4. The legal obligations imposed by this Section shall be enforced through the process described in Provisions 3 and 4 of this Ordinance, below.

3. ISSUANCE OF OCCUPANCY LICENSES:

A. Prior to occupying any leased or rented dwelling unit, each occupant, age 18 or older, must obtain an occupancy license.

B. It is the occupant's responsibility to submit an occupancy license application to the Fremont Police Department, pay a fee of $5 to the City, and obtain an occupancy license. If there are multiple occupants seeking to occupy a single rental unit, each occupant must obtain his or her own license. An applicant for an occupancy license may designate the owner or manager of the dwelling unit as his agent to collect the required information and submit the required application form(s), signed by the applicant, to the Fremont Police Department on the applicant's behalf. The City may establish a procedure whereby an applicant (or designated owner or agent) may submit the required application form(s), signed by the applicant, via facsimile or website portal.

C. The owner or manager of any dwelling unit must notify each prospective occupant of this requirement and shall not permit occupancy of a dwelling unit unless the occupant first obtains an occupancy license.

D. Each occupancy license is valid only for the occupant for as long as the occupant continues to occupy the dwelling unit for which such license was applied. Any relocation to a different dwelling unit requires a new occupancy license.

E. Applications for occupancy licenses shall be made upon forms furnished by the City for such purposes and shall require the following information:

(1) Full legal name of occupant;
(2) Mailing address of occupant;
(3) Address of dwelling unit for which occupant is applying, if different from mailing address;
(4) Name and business address of dwelling unit owner or manager;
(5) Date of lease commencement;
(6) Date of birth of occupant;
(7) Occupant's country or citizenship;
(8) Full legal name and date of birth of each minor dependent residing with occupant;
(9) (a) *in cases in which the applicant is a United States citizen or national,* a signed declaration that the applicant is a United States citizen or national on a form provided by the City, which notifies the applicant that knowingly making any false statement or claim that he or she is, or at any time has been, a citizen or national of the United States, with the intent to obtain a state benefit or service is a crime under United States Code Title 18, Section 1015(e);

Or

(b) in cases in which the applicant is not a United States citizen or national, an identification number assigned by the federal government that the occupant believes establishes his lawful presence in the United States (examples include, but are not limited to: resident alien card number, visa number, "A" number, 1-94 registration number, employment authorization number, or any other number on a document issued by the U.S. Government). *If the alien does not know of any such number, he shall* so declare. *Such* a *declaration shall be sufficient to satisfy this requirement.*

F. Upon receipt of a complete signed application and the payment of the application fee as set forth above, the City shall immediately issue an occupancy license. The City shall not deny an occupancy license to any occupant who submits a completed application and pays the application fee.

G. All information contained in occupancy license applications shall be maintained as confidential by the City, except that the information provided on an application may be disclosed to other government entities where authorized by law, pursuant to United States Code Title 8, Section 1373.

H. It shall be a violation of this section for a lessor to lease or rent a dwelling unit without obtaining and retaining a copy of the occupancy license of every known occupant of the dwelling unit.

I. It shall be a violation of this section for a lessor to lease a dwelling unit without including in the terms of the lease a provision stating that occupancy of the premises by a person, age 18 or older, who does not hold a valid occupancy license constitutes an event of default under the lease.

J. It shall be a violation of this section for a landlord or any agent of a landlord with authority to initiate proceedings to terminate a lease or tenancy to knowingly permit an occupant to occupy a dwelling unit without a valid occupancy license. It is a defense to a prosecution under this paragraph that the landlord or agent has commenced and diligently pursued such steps as may be required under the applicable law and lease provisions to terminate the lease or tenancy.

K. Any person who violates this section shall be subject to a fine of $100 for each such violation, upon conviction in the County Court for Dodge County.

L. The lease or rental of a dwelling unit without obtaining and retaining a copy of the occupancy license of every known occupant, age 18 or older, shall be a separate violation for each occupant in a dwelling unit for which no license is obtained and retained, and for each day of such occupancy, beginning on the 46th day after the date of a revocation notice under Section 5.

4. ENFORCEMENT OF HARBORING AND OCCUPANCY PROVISIONS

Notwithstanding any other provision of this Ordinance, the Fremont Police Department (Hereinafter "Department") shall enforce the requirements of this Ordinance as follows.

A. Promptly after issuance of an occupancy license to any occupant who has not declared himself or herself to be either a citizen or a national of the United States, the Department shall, pursuant to Title 8, United States Code, Section 1373(c), request the federal government to ascertain whether the occupant is an alien lawfully present in the United States. The Department shall submit to the federal government the identity and immigration status information contained on the application for the occupancy license, along with any other information requested by the federal government. The Department may enter into a memorandum of understanding to use the Systematic Alien Verification for Entitlements (SAVE) Program operated by the U.S. Department of Homeland Security, or utilize any other process or system designated by the federal government.

B. If the federal government reports that the occupant is not lawfully present in the United States, the Department shall send a deficiency notice to the occupant, at the address of the dwelling unit shown on the application for occupancy license. The deficiency notice shall state that on or before the 60th day following the date of the notice, the occupant may seek to obtain a correction of the federal government's records and/or provide additional information establishing that the occupant is lawfully present in the United States. If the occupant provides such additional information, the Department shall promptly submit that information to the federal government. The occupant may also submit information directly to the federal government.

C. If the federal government notifies the Department that it is unable to conclusively ascertain the immigration status of the occupant, or that the federal government's ascertainment of immigration status is tentative, the Department shall take no further action until final ascertainment of the immigration status of the occupant is received from the federal government. The Department shall not attempt to make an independent determination of any occupant's immigration status. If the federal government notifies the Department that more information is required before the federal government can issue a final ascertainment of the occupant's immigration status, or that the occupant may contest the federal government's ascertainment of status, the Department shall notify the occupant

accordingly.

D. No earlier than the 61st day after a deficiency notice has been sent to an occupant, the Department shall again make an inquiry to the federal government seeking to ascertain the immigration status of the occupant. if the federal government reports that the occupant is an alien who is not lawfully present in the United States, the Department shall send a revocation notice to both the occupant and the lessor. The revocation notice shall revoke the occupant's occupancy license effective 45 days after the date of the revocation notice.

E. The terms of this section shall be applied uniformly, and enforcement procedures shall not differ based on a person's race, ethnicity, religion, or national origin.

F. Judicial review shall also be available as follows:

1. Any landlord or occupant who has received a deficiency notice or a revocation notice may seek pre-deprivation or post-deprivation judicial review of the notice by filing suit against the City in a court of competent jurisdiction.

2. In the event that such a suit is filed prior to or within fifteen days after the date of the relevant revocation notice, if any, revocation shall be automatically stayed until final conclusion of judicial review.

3. The landlord or occupant may seek judicial review of the question of whether the Department complied with the provisions of this Ordinance or other relevant provisions of federal, state, or City law, or the question of whether the occupant is an alien not lawfully present in the United States, or of both such questions.

4. In a suit for judicial review in which the question of whether the occupant is an alien not lawfully present in the United States is to be decided, that question shall be determined under federal law. In answering the question, the court shall defer to any conclusive ascertainment of immigration status by the federal government.

5. The court may take judicial notice of any ascertainment of the immigration status of the occupant previously provided by the federal government. The court may, either sua sponte or at the request of a party, request the federal government to provide, in automated, documentary, or testimonial form, a new ascertainment of the immigration status of the occupant pursuant to United States Code Title 8, Section 1373(c). The most recent ascertainment of the immigration status of an individual by the federal government shall create a rebuttable presumption as to the individual's immigration status.

5. BUSINESS LICENSES, CONTRACTS OR GRANTS; THE E-VERIFY PROGRAM.

A. it is the policy of the City to discourage business entities from knowingly recruiting, hiring for employment, or continuing to employ any person who is an unauthorized alien to perform work within the City.

B. This Section shall not apply to the hiring of an independent contractor by a business entity, or to the intermittent hiring of casual labor for domestic tasks customarily performed by the residents of a dwelling. Such independent contractors or Laborers are not employees within the meaning of this Section. This Section shall be interpreted to be fully consistent with United States Code Title 8, Section 1324a, and with all other applicable provisions of federal law.

C. An authorized representative of any business entity that applies for any business license or permit in the City, or is awarded a contract for work to be performed in the City, or applies for any grant or loan from the City shall be required to execute an affidavit to the effect that the business entity does not knowingly employ any person who is an unauthorized alien, The business entity shall also provide documentation confirming that the business entity has registered in the E-Verify Program. Compliance with this section shall be a condition of any license or permit granted by the City, any contract awarded by the City and of any grant or loan given by the City.

D. All agencies of the City shall register in the E-Verify Program and use the EVerify Program to verify the

authorization of employment in the United States of each employee hired after such registration.

E. Every business entity employing one or more employees and performing work within the City shall register in the E-Verify Program within 60 days after the effective date of this Ordinance, and shall use the E-Verify Program to verify the authorization of employment in the United States of each employee hired after such registration.

F. Any business entity employing one or more employees that begins performing work within the City later than 60 days after the effective date of this Ordinance shall register in the E-Verify Program prior to commencing any work within the City, and shall use the E-Verify Program to verify the authorization of employment in the United States of each employee hired after such registration.

G. In the enforcement of this Section, at no point shall any City official attempt to make an independent determination of the authorization of employment in the United States of any individual employed by a private business entity in the City.

H. This Section shall be enforced by the City Attorney as follows:

1 If a business entity possesses a license, permit, contract, loan, or grant issued by the City and violates this Section, by failing to register in the EVerify Program and verify the authorization of employment in the United States of each employee hired after such registration, the business entity shall be tried at a public hearing before the City Council. Due process, including notice, the opportunity to present evidence and to be heard, and the right to appeal to the District Court of Dodge County, shall be accorded to all parties. If the City Council determines that a person or business entity has violated this Section, it may, according to the terms of such license, permit, contract, loan or grant, revoke the license, cancel the contract, recall the grant or accelerate the loan and institute an action to collect any sums due.

2. The City Attorney may bring a civil action against any business entity suspected of violating this section, by failing to register in the E-Verify Program and verify the authorization of employment in the United States of each employee hired after such registration, in a court of competent jurisdiction in Dodge County. The City Attorney may seek injunctive relief compelling the business entity to comply with this section.

The following judicial review shall also be available:

1. Any business entity that is subjected to enforcement under this Ordinance may seek pre-deprivation or post-deprivation judicial review of the enforcement of this Ordinance with respect to such business entity in any court of competent jurisdiction. While such judicial review is occurring, any actions by the City to revoke a license, permit, contract, loan, or grant issued by the City shall be stayed.
2. Any business entity or employee subject to the terms of this Ordinance may seek judicial review of the question of whether the City has complied with the provisions of this Ordinance or other relevant provisions of federal, state, or City law in the County Court for Dodge County, or in any other court of competent jurisdiction.

SECTION 2. CONSTRUCTION AND SEVERABILITY:

A. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens, nationals, and aliens.

B. If any part or provision of this Ordinance is in conflict or inconsistent with applicable provisions of federal or state statutes, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part of provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.

SECTION 3. REPEAL:

Any ordinance or parts of ordinances of the City of Fremont in conflict herewith are hereby repealed.

SECTION 4. EFFECTIVE DATE:

This Ordinance shall be in full force and effect from and after passage and publication according to law,

PASSED AND APPROVED THIS _____DAY OF _____ , 2010

Donald B. Edwards, Mayor _____

ATTEST:

_____
Kimberly Volk, CMC