

FILED MISC  
no fee  
2003 DEC 30 PM 3:00  
Margaret Henkle  
MARGARET HENKLE  
FREMONT COUNTY RECORDER  
SIDNEY, IOWA

Resolution No. 2003-91

RESOLUTION APPROVING FREMONT COUNTY ORDINANCE 2003-2 AN ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES, REQUIRING LICENSES, REGULATING THE LOCATION THEREOF AND PROVIDING PENALTIES FOR VIOLATION.

Whereas it is the desire of the public and the Fremont County Board of Supervisors to promote the health, safety, morals and general welfare of the citizens of the county by regulating sexually oriented businesses in Fremont County, and

Whereas, a proposed ordinance has been presented to the Board and approved by the Sheriff and the County Attorney and

Whereas, public hearing was held pursuant to notice published as required by law, and a summary of the proposed ordinance has been published also, and copies of the proposed ordinance have been available at the office of the Fremont County Auditor, and

Whereas, the Board has heard the views of the public and the Board is of the view that the adoption of said ordinance is in the interest of the public of Fremont

NOW, THEREFORE, BE IT RESOLVED;

ORDINANCE 2003-2 AN ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES, REQUIRING LICENSES, REGULATING THE LOCATION THEREOF AND PROVIDING PENALTIES FOR VIOLATION is hereby approved as attached hereto.

The Auditor is directed to publish the Ordinance and authenticate it as required by law.

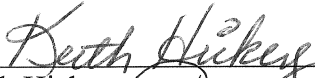
When Effective: This Ordinance shall be in effect after its final passage, approval, and publication as provided by law.

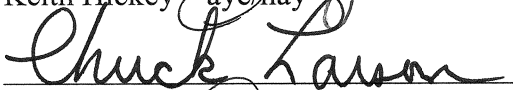
First consideration December <sup>30</sup>~~29~~, 2003  
Second consideration waived  
Third consideration waived

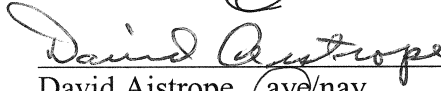
Waiver of second and third consideration. Moved by Aistrop, Seconded by Larson, Roll Call: Aistrop aye nay Hickey aye nay Larson aye nay.

Motion to approve Ordinance No 2003-2 after waiving second and third consideration made this 30<sup>th</sup> day of December, 2003 at 10:30 o'clock a.m. by Aistrop, seconded by Larson.


Roll call:

  
\_\_\_\_\_  
Keith Hickey  aye  nay

  
\_\_\_\_\_  
Chuck Larson  aye  nay

  
\_\_\_\_\_  
David Aistrop  aye  nay.

Attest:

  
\_\_\_\_\_  
Lucille Hunt  
Fremont County Auditor

Resolution prepared and submitted by

Vicki R. Danley  
Fremont County Attorney

2003 2356  
FILED MISC  
No fee  
2003 DEC 30 PM 2:57  
Margaret Henkle  
MARGARET HENKLE  
FREMONT COUNTY RECORDER  
SIDNEY, IOWA

**ORDINANCE 2003-2: AN ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES, REQUIRING LICENSES, REGULATING THE LOCATION THEREOF AND PROVIDING PENALTIES FOR VIOLATION**  
**DECLARATION OF INTENT**

It is the purpose of this ordinance to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the county, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the county. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

**1. DEFINITIONS**

**ADULT ARCADE:**

Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

**ADULT BOOKSTORE OR ADULT VIDEO STORE:**

A commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or (2) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas."

**ADULT CABARET:**

A nightclub, bar, restaurant or similar commercial establishment which regularly features: (1) Persons who appear in a state of nudity; or (2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or (3) Films, motion picture, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

**ADULT MOTEL:**

A hotel, motel or similar commercial establishment which: (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

**ADULT MOTION PICTURE THEATER:**

A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

**ADULT THEATER:**

A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

**ESCORT:**

A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**ESCORT AGENCY:**

A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

**ESTABLISHMENT:**

Means and includes any of the following: (1) The opening or commencement of any sexually oriented business as a new business; (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually

oriented business; (3) The additions of any sexually oriented business to any other existing sexually oriented business; or (4) The relocation of any sexually oriented business.

**PERMITTEE AND/OR LICENSEE:**

A person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

**NUDE MODEL STUDIO:**

Any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

**NUDITY OR A STATE OF NUDITY:**

The appearance of a human bare buttock, anus, male genitals, female genitals, female breast, including the areola.

**PERSON:**

An individual, proprietorship, partnership, corporation, association, or other legal entity.

**SEMI-NUDE:**

A state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

**SEXUAL ENCOUNTER CENTER:**

A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

**SEXUALLY ORIENTED BUSINESS:**

An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

**SPECIFIED ANATOMICAL AREAS:**

The male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

**SPECIFIED SEXUAL ACTIVITIES:**

Means and includes any of the following: (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy; (3) Masturbation, actual or simulated; or (4) Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

**SUBSTANTIAL ENLARGEMENT:**

A sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25) percent, as the floor areas exist on January 1, 1996.

**TRANSFER OF OWNERSHIP OR CONTROL:**

Transfer of ownership or control of a sexually oriented business means and includes any of the following:

(1) The sale, lease or sublease of the business; (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or (3) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**2. CLASSIFICATION**

Sexually oriented businesses are classified as follows:

- A. adult arcades;
- B. adult bookstores or adult video stores;
- C. adult cabarets;
- D. adult motels;
- E. adult motion picture theaters;
- F. adult theaters;
- G. escort agencies;
- H. nude model studios; and
- I. sexual encounter centers.

**3. PERMIT AND/OR LICENSE REQUIRED**

A. A person commits a simple misdemeanor and/or a county infraction if he operates a sexually oriented business without a valid permit and/or license, issued by the county for the particular type of business.

B. An application for a permit and/or license must be made on a form provided by the Zoning Administrator. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business.

The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

C. The applicant must be qualified according to the provisions of this article and the premises must be inspected and found to be in compliance with the law by the health department, fire department and building official.

D. If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a permit/or license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10) percent or greater interest in the business must sign the application for a permit and/or license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a ten (10) percent or greater interest in the corporation must sign the application for a permit and/or license as applicant.

E. The fact that a person possesses other types of state or county permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business permit and/or license.

**4. ISSUANCE OF PERMIT AND/OR LICENSE**

The Fremont County Zoning Administrator shall approve the issuance of a permit and/or license to an applicant within thirty (30) days after receipt of an application unless he finds one or more of the following to be true:

- A. An applicant is under eighteen (18) years of age.
- B. An applicant or an applicant's spouse is overdue in his payment to the county of taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business.
- C. An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has falsely answered a question or request for information on the application form.
- D. An applicant is residing with a person who has been denied a permit and/or license by the County to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
- E. The premises to be used for the sexually oriented business have not been approved by the health department, fire department and building official as being in compliance with applicable laws and ordinances.
- F. The permit and/or license fee required by this ordinance has not been paid.
- G. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.
- H. The permit and/or license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit and/or license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

The health department, fire department and building official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of the receipt of the application by the Zoning Administrator. The certification shall be promptly presented to the Zoning Administrator.

#### **5. FEES**

The annual fee for a sexually oriented business permit and/or license is five hundred (\$500.00) Dollars.

#### **6. INSPECTION**

- A. An applicant or permittee and/or licensee shall permit representatives of the sheriff's department, health department, fire department, zoning department or other county departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
- B. A person who operates a sexually oriented business or his agent or employee commits a simple misdemeanor and/or county infraction if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

#### **7. EXPIRATION OF PERMIT AND/OR LICENSE**

- A. Each permit and/or license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 11-C Commercial District Regulations of Fremont County Zoning and Subdivision Ordinances. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the permit and/or license will not be affected.
- B. When the Zoning Administrator denies renewal of a license, the applicant shall not be issued a permit and/or license for one year from the date of denial. If subsequent to denial, the Zoning Administrator finds that the basis for denial of the renewal permit and/or license has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date denial became final.

#### **8. SUSPENSION**

The Fremont County Zoning Administrator shall suspend a permit and/or license for a period not to exceed thirty (30) days if he determines that a permittee and/or licensee or an employee of a permittee and/or licensee has:

- A. violated or is not in compliance with any section of this ordinance;
- B. engaged in excessive use of alcoholic beverage while on the sexually oriented business premises;
- C. refused to allow an inspection of the sexually oriented business premises as authorized by this article;
- D. knowingly permitted gambling by any person on the sexually oriented business premises.

#### **9. REVOCATION**

- A. The Fremont County Zoning Administrator shall revoke a permit and/or license if a cause of suspension in Section 11-C Commercial District Regulations of Fremont County Zoning and Subdivisions Ordinances occurs and the permit and/or license has been suspended within the proceeding twelve (12) months.
- B. The zoning administrator shall revoke a permit and/or license if he determines that:
  - 1. A permittee and/or licensee gave false or misleading information in the material submitted to the auditor during the application process;
  - 2. A permittee and/or licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
  - 3. A permittee and/or licensee or an employee has knowingly allowed prostitution on the premises;
  - 4. A permittee and/or licensee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended.
  - 5. A permittee and/or licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted and/or licensed premises;
  - 6. A permittee and/or licensee is delinquent in payment to the county or state for any taxes for fees past due.
- C. When the Zoning Administrator revokes a permit and/or license, the revocation shall continue for one (1) year, and the permittee and/or licensee shall not be issued a sexually oriented permit and/or license for one (1) year from the date revocation became effective. If, subsequent to revocation, the Fremont County Zoning Administrator finds that the basis

for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the revocation became effective.

D. Appeals governed by procedures set forth in Section 11-C Commercial District Regulations of Fremont County Zoning and Subdivisions Ordinances of the Fremont County Zoning Ordinance and Rules of Procedure adopted by the Fremont County Board of Adjustment.

#### **10. TRANSFER OF PERMIT AND/OR LICENSE**

A permittee and/or licensee shall not transfer his permit and/or license to another, nor shall a permittee and/or licensee operate a sexually oriented business under the authority of a permit and/or license at any place other than the address designated in the application.

#### **11. LOCATION OF SEXUALLY ORIENTED BUSINESSES**

A. The Fremont County Zoning Ordinance will include the following uses in a C-2 General Commercial District. The permitted principal uses and structures shall be those enumerated in Section 11-C Commercial District Regulations of Fremont County Zoning and Subdivisions Ordinances of the Fremont County Zoning Ordinance as well as the following:

1. adult arcades;
2. adult bookstores or adult video stores;
3. adult cabarets;
4. adult motels;
5. adult motion picture theaters;
6. adult theaters;
7. escort agencies;
8. nude model studios; and
9. sexual encounter centers.

The permitted accessory uses and structures; permitted special exceptions; prohibited uses and structures; minimum lot area; minimum lot width; minimum yard requirements; maximum lot coverage by all building; maximum height of structures; minimum off-street parking and loading requirements; and sign regulations shall be the same as those required under the C-2 General Commercial District classification as cited in Section 11-C Commercial District Regulations of Fremont County Zoning and Subdivisions Ordinances of the Fremont County Zoning Ordinance.

B. A person commits a simple misdemeanor and/or county infraction if he operates or causes to be operated a sexually oriented business outside of a designated C-2 district. All sexually oriented businesses shall be located within a C-2 district.

C. A person commits a simple misdemeanor and/or county infraction if he operates or causes to be operated a sexually oriented business within one thousand (1,000) feet of:

1. a church;
2. a public or private elementary or secondary school;
3. a boundary of any residential district;
4. a public park adjacent to any residential district;
5. the property line of a lot devoted to residential use.

D. A person commits a simple misdemeanor and/or county infraction if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand (1,000) feet of another sexually oriented business.

E. A person commits a simple misdemeanor and/or a county infraction if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor areas of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

F. For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district or residential lot.

G. For purposes of Subsection D of this section, the distance between two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

H. Any sexually oriented business lawfully operating on January 1, 1996, that is in violation of Subsection A through G of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

I. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, of a church, public or private elementary or secondary school, public park, residential district, or a residential lot within one thousand (1,000) feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license, and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

#### **12. ADDITIONAL REGULATIONS FOR ADULT MOTELS**

A. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttal presumption that the establishment is an adult motel as the term is defined in this article.

B. A person commits a simple misdemeanor and/or a county infraction if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented permit and/or license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

C. For purposes of Subsection B of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

### **13. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS**

A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for a sexually oriented permit and/or license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Fremont County Zoning Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. The application shall be sworn to be true and correct by the applicant.

3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Zoning Administrator or his designee.

4. It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

6. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in Subsection 5 remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure the no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection 1 of this section.

7. No viewing room may be occupied by more than one person at any time.

8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) footcandle as measured at the floor level.

9. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

B. A person having a duty under Subsection 1 through 9 of Subsection A above commits a simple misdemeanor and/or county infraction if he fails to fulfill that duty.

### **14. EXEMPTIONS**

A. It is a defense to prosecution under Section 11-C Commercial District Regulations of Fremont County Zoning and Subdivisions Ordinances that a person appearing in a state of nudity did so in a modeling class operated:

1. by a proprietary school, licensed by the State of Iowa; a college, junior college, or university supported entirely or partly by taxation;

2. by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

3. in a structure:

a. which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

b. where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

c. where no more than one nude model is on the premises at any one time.

### **15. CONFLICTING ORDINANCES REPEALED**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.