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## ARTICLE XX

### MORATORIUM

AN ARTICLE PROVIDING FOR A MORITORIUM ON THE ESTABLISHMENT OF A SEXUALLY ORIENTED BUSINESS AND PROVIDING NO APPLICATION SHALL BE PROCESSED AND NO PERMIT ISSUED FOR THE ESTABLISHMENT OR EXPANSION OF A SEXUALLY ORIENTED BUSINESS, INCLUDING BUT NOT LIMITED TO A SEX SHOP, LINGERIE MODELING STUDIO, SEXUALLY ORIENTED CINEMA, SEXUALLY ORIENTED CABARET, SEXUALLY ORIENTED MEDIA OUTLET, OR BUSINESS CONTAINING A MOTION PICTURE ARCADE.

WHEREAS the Cold Spring Planning and Zoning Commission and the city of Cold Spring have duly prepared a comprehensive plan in accordance with KRS Chapter 100, specifically "The 2000 Cold Spring Comprehensive Plan," adopted by the Cold Spring Planning and Zoning Commission on October 10, 2000;

WHEREAS, the city of Cold Spring has long sought to regulate sexually oriented businesses within the limits of the Constitution to protect the City's many residential neighborhoods; and

WHEREAS, recent reviews have found that the city of Cold Spring has no regulations whatsoever to deal with sexually oriented businesses as a specific land use; and

WHEREAS, there are already several sexually oriented businesses in Campbell County; and

WHEREAS, a new sexually oriented cabaret has recently opened in Wilder; and

WHEREAS, planning and building staff in the jurisdictions in Campbell County have received several recent inquiries about the possibility of additional sexually oriented businesses opening in the County; and

WHEREAS, Kentucky Revised Statutes §100.201(1) specifically authorizes the adoption of Interim Zoning Regulations while the planning commission completes additional parts of the plan and/or completes the necessary regulations to implement the plan; and

WHEREAS, the city of Cold Spring finds that the adopted comprehensive plan does not provide adequate information to allow the Planning Commission to make recommendations for the appropriate regulation of sexually oriented businesses; and

WHEREAS, the Kentucky General Assembly has adopted and the Governor has approved Kentucky 2003 H.B. 268, "an act relating to licensing massage therapists"; and

WHEREAS, county and city officials have long noted a difference between legitimate massage therapists and some sexually oriented businesses which present themselves as "massage parlors" or similar establishments;

WHEREAS, the Northern Kentucky Area Planning Commission, acting on behalf of and with funding from the Fiscal Court and the several municipalities within the County, has hired national experts in the field as consultants to study the issues of regulating sexually oriented businesses in the County and city; and

WHEREAS, the consultants have represented to the Northern Kentucky Area Planning Commission and representatives of the Fiscal Court and cities that they will deliver their preliminary report within 4 to 6 months and specific regulatory recommendations shortly thereafter; and

WHEREAS, the city of Cold Spring finds that the completion of the study of sexually oriented businesses by national experts, and under the guidance of the Northern Kentucky Area Planning Commission, is essential to supplement the comprehensive plan; and

WHEREAS, the city of Cold Spring finds that it is essential to preserve the status quo and to avoid the addition of a new sexually oriented business in what may prove to be an inappropriate location until the Planning Commission and the city of Cold Spring have available to them the results of the study;

NOW THEREFORE, be it RESOLVED by the Cold Spring Planning and Zoning Commission, Campbell County, Kentucky that:

SECTION 1. The following definitions are adopted for purposes of this Article, to supplement the definitions already contained in the zoning ordinance of the city of Cold Spring:

*Lingerie modeling studio* means an establishment or business which provides the services of live models modeling lingerie, bathing suits, or similar wear to individuals, couples or small groups in a room smaller than 600 square feet.

*Massage* means touch, stroking, kneading, stretching, friction, percussion and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an osseous tissue manipulation or adjustment).

*Massage therapy* means the profession in which the practitioner applies massage techniques with the intent of positively affecting the health and well-being of the client, and may adjunctively (i) apply allied modalities, heat, cold, water and topical preparations not classified as prescription drugs, (ii) use hand held tools or devices designed as t-bars or knobblies, and (iii) instruct self care and stress management. "Manual" means by use of hand or body.

*Media* means anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything which is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, cd-roms, other magnetic media, and undeveloped pictures.

*Motion picture arcade booth* means any booth, cubicle, stall or compartment which is designed, constructed or used to hold or seat customers and is used for presenting motion pictures or viewing publications by any photographic, electronic, magnetic, digital or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, cd-rom, books, magazines or periodicals) for observation by customers therein. The term "booth," "arcade booth," "preview booth," and "video arcade booth" shall be synonymous with the term "motion picture arcade booth".

*Primary live entertainment* means that entertainment which characterizes the establishment, as determined (if necessary) from a pattern of advertising as well as actual performances.

*Sadomasochistic practices* mean flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed or naked.

*Sex shop* means a an establishment offering goods for sale or rent and that meets any of the following tests:

- (1) It offers for sale items from any two (2) of the following categories: sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices, and the combination of such items make up more than ten percent (10%) of its stock in trade or occupies more than 10 percent (10%) of its floor area; or,
- (2) More than five percent (5%) of its stock in trade consists of sexually-oriented toys or novelties; or,

- (3) More than five percent (5%) of its gross public floor area is devoted to the display of sexually-oriented toys or novelties.

*Sexual conduct* means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, buttock or female breast of a person for the purpose of arousing or gratifying the sexual desire of another person.

*Sexual gratification* means sexual conduct as defined herein.

*Sexually oriented acts* means sexual conduct as defined herein.

*Sexually oriented business* is an inclusive term used to describe collectively: sexually oriented cabaret; sexually oriented motion picture theater; motion picture arcade; bathhouse; massage parlor or shop; and/or sex shop. This collective term does not describe a specific land use and shall not be considered a single use category for purposes of the zoning code or other applicable ordinances.

*Sexually oriented cabaret* or *sex oriented cabaret* means a building or portion of a building regularly featuring dancing or other live entertainment if the dancing or entertainment which constitutes the “primary live entertainment” is distinguished or characterized by an emphasis on the exhibiting of “specific sexual activities” or “specified anatomical areas” for observation by customers therein.

*Sexually oriented cinema*, *sexually oriented motion picture theater*, or *sex oriented cinema* means a cinema or motion picture theater which shows hard-core features on more than half the days that it is open, or which is marketed as or offers features described as “adult”, “XXX”, or sexually oriented.

*Sexually oriented media* means magazines, books, videotapes, movies, slides, cd-roms or other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” (separately defined).

*Sexually oriented media store* or *sex oriented media store* means an establishment that rents and/or sells media, and that meets any of the following three tests:

- (1) More than forty percent (40%) of the gross public floor area is devoted to sexually oriented media; or

- (2) More than forty percent (40%) of the stock in trade consists of sexually oriented media; or
- (3) It is advertised, marketed, or holds itself out in any forum as “XXX,” “adult,” “sex” or otherwise as a sexually-oriented business.

SECTION 2. That the authority of those persons within each jurisdiction in the city of Cold Spring authorized to accept applications and issue building permits is hereby limited as follows: no application shall be processed and no permit issued for the establishment or expansion of a sexually oriented business, including but not limited to a sex shop, lingerie modeling studio, sexually oriented cinema, sexually oriented cabaret, sexually oriented media outlet, or business containing a motion picture arcade.

SECTION 3. No permit, license or other authority shall be issued for the establishment of a massage parlor or similar establishment unless the applicant for such permit or license either: 1) has been licensed by the Kentucky Board of Licensure for Massage Therapy, or, 2) if such board has not been established or has not implemented its licensing procedure, can provide documentation that the applicant can substantially comply with the licensing requirements of Sections 9 and 11 of 2003 Ky. H.B. 268.

SECTION 4. These interim regulations shall go into effect upon adoption and remain in effect for a period concluding on May 15, 2004, or upon the adoption of a new ordinance in response to the study, whichever shall first occur.

SECTION 5. That any section or part of any section or any provision of this Article which is declared invalid by a Court of appropriate jurisdiction, for any reason, such declaration shall not invalidate, or adversely affect, the remainder of this Article.

SECTION 6. That this Article shall take effect and be in force when passed, published and recorded according to law.