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# Memorandum

**To:** Chair, Vice Chair, LPA Members, Town of Fort Myers Beach  
**CC:** Town Manager, Community Development Director, Town Clerk  
**Date:** July 3, 2009  
**Subject:** Draft Ordinance Regulating Sexually Oriented Businesses/Legal Comments

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At its last review of this draft ordinance, LPA members requested a legal review of various questions. One of those questions concerned the Town's ability to increase the distance that a sexually oriented business must be located away from various specified premises to 2,000 (or more) feet, which doubles the current Town regulation which provides for 1000 feet. Specifically, could the Town legally pass such increased restriction, knowing that such restriction has the effect of preventing the opening of any such business within the Town? While this is a complex legal question due to the First Amendment protections for these types of businesses, it appears that a court would view such action as a complete prohibition and therefore not legally permissible. Please note that, absent LPA direction, I have not reviewed the constitutionality of the current ordinance which contains the 1,000 foot restriction.

A follow-up LPA question was whether, if a business owner could hypothetically purchase a certain amount of contiguous property and then go through a rezoning hearing to request permission to open this type of business, would that cure the legal defect? The answer is no; it is unlikely to resolve the legal concerns.

In addition, a question was raised regarding the various studies supplied for LPA review. It is recommended that additional studies that are of more recent vintage be provided, and that the LPA discuss the various elements of these studies on the record to develop a factual basis for any proposed new regulations. Ordinances which involve federal and state constitutional issues require the development of very detailed legislative histories to support governmental action.

Once the LPA has had an opportunity to review these matters and provide further direction, I will proceed with a legal review. Please note, however, that this review would be highly detailed and complex due to the federal and state constitutional issues involved.

Thank you for your review of the foregoing matters.