

CITY OF SOUTH MIAMI
Environmental Review & Preservation Board
Agenda
Tuesday, November 3, 2020
City Commission Chambers
8:30 A.M.

City of South Miami Ordinance No. 28-14-2206 requires all lobbyists before engaging in any lobbying activities to register with the City Clerk and pay an annual fee of \$500.00. This applies to all persons who are retained to represent a business entity or organization to influence "City" action. "City" action is broadly described to include the ranking and selection of professional consultants, and virtually all-legislative, quasi-judicial and administrative action. It does not apply to not-for-profit organizations, local chamber and merchant groups, homeowner associations, or trade associations and unions.

In order to balance the need for the City of South Miami to function and conduct vital business during the COVID 19 pandemic and, at the same time, protect the health, safety, and welfare of our citizens and our staff, the City shall conduct its upcoming meetings virtually, including the Environmental Review and Preservation Board for the month of November 2020, virtually through communications media technology (CMT) as explained more particularly below.

In accordance with City of South Miami Code, Chapter 286.011, Fla. Stat, City Manager's declaration of a state of emergency, the City's emergency resolution and ordinances and the City's Home Rule Powers and in the event that the Governor's Executive Order (EO) 20-69, as amended, is extended beyond November 1, 2020, the City will be holding its Environmental Review and Preservation Board Meeting VIRTUALLY. In the event that the EO 20-69 is not extended and in the event that the City's ordinances and resolution, as well as the City Manager's Declaration of emergency and her emergency orders require that a quorum be physically present, then in that event a quorum of the Board will be physically present in Commission Chambers but the meeting will still be held virtually. The meeting is scheduled to begin on **Tuesday, November 3, 2020 at 8:30 a.m.** to consider the following public hearing items:

I. Call to Order

II. Pledge of Allegiance to the Flag

III. Roll Call

IV. Swearing In

V. Requests are as follows:

[Note: following the presentation of a case the Board Chair will open public comment on the item to interested parties]

Quasi-Judicial Warning: The following matters are considered to be quasi-judicial. You are advised to review the full "Warning Regarding Ex Parte Communications" that can be found at the end of this agenda.

A) ERPB-2020-016

Applicant: Dennis Prieto / Castor Construction

Property Owner: Esperanza Lopez

Location: 6282 SW 44th Street

Request: Revisions (Two-Story New Construction) - Final

B) ERPB-2020-017

Applicant: 5850 SW 73 Street, LLC

Property Owner: 5850 SW 73 Street, LLC

Location: 5850 SW 73 Street

Request: New Construction - Preliminary

C) ERPB-2020-008

Applicant: Howard Bogis

Property Owner: Scott Fuhrman

Location: 5800 SW 87 Street

Request: New Const. Breezeway – Final

D) ERPB-2019-002

Applicant: Audie Tatum and Jermaine Clarke
Property Owner: London Wood and Laura Kohn Wood
Location: 7731 SW 60th Avenue

Request: New Const. One-Story - Final

E) ERPB-2020-014

Applicant: Ruth Wiesen
Property Owner: The Thomas Armour Youth Ballet, Inc
Location: 5818 SW 73rd Street

Request: Exterior Awning Installation - Final

F) ERPB-2020-021

Applicant: Vivian Valdivia
Property Owner: McDonald’s Corporation
Location: 6150 South Dixie Highway

Request: Signage Installation – Final

VI. Approval of Minutes:

A) Tuesday, October 20, 2020 at 8:30 A.M.

VII. Next ERPB meeting:

A) Tuesday, November 17, 2020 at 8:30 A.M.

VIII. Adjournment

Warning regarding ex parte communication: “Ex parte communication” is a written or verbal communication, between an elected or appointed public official and an applicant, his or her representatives, a citizen or any other person concerning the subject of a pending quasi-judicial hearing but which communication takes place outside of the hearing and before final action on the matter. The Florida Legislature by the adoption of section 286.0115(1), Florida Statutes, has authorized the adoption of local ordinances to remove the presumption of prejudice created by *ex parte* communications if certain procedures are followed to ensure that the written or verbal exchange is made public. It is designed to remove any presumption of prejudice that would otherwise result if the communication were kept private and not disclosed. *Ex parte* communication must be publicly disclosed prior to or at the quasi-judicial hearing at which the decision is to be made in order to dispel the presumption of prejudice. Almost all communication that occurs outside of the quasi-judicial hearing is considered to be hearsay and is not competent evidence. Normally, hearsay may not form the basis for making any quasi-judicial decisions, but it may be used to support or explain competent evidence. All decisions made at a quasi-judicial hearing must be based on substantial competent evidence.

Pursuant to Ordinance §2-2.1, City Code, the South Miami City Commission has adopted these procedures to dispel the presumption of prejudice due to *ex-parte* communications as follows:

1. The elected or appointed public official shall disclose in writing the subject of the communication and the identity of the person, group, or entity with whom the communication took place, as soon as practicable after the communication takes place, with the city clerk and made a part of the record at the hearing before final action on the matter.
2. A local public official may read a written communication from any person. Any written communication that relates to quasi-judicial action pending before a local public official, shall not be presumed prejudicial to the action, provided such written communication is disclosed and made a part of the record before final action on the matter.
3. A local public official may conduct investigations, make site visits and receive expert opinions regarding quasi-judicial action pending or impending before him or her provided that such activities and the existence of such investigations, site visits or expert opinions is made a part of the record before final action is taken on the matter.
4. Disclosure made pursuant to paragraphs 1, 2 and 3 above must be made before or during the public meeting at which a vote is taken on such matters so that persons who have opinions contrary to those expressed in the *ex parte* communication are given a reasonable opportunity to refute or respond to the communication.

It is possible that if the statute or ordinance discussed above, or a quasi-judicial action pending before the Commission or board are challenged, that a court might find that, despite the enactment of these procedures, the *ex parte* communications did in fact created a presumption of prejudice, which could result in the action taken being reversed. You thus proceed at your own risk in engaging in such communications, and they are not encouraged. They are, however, the policy of the Legislature and City Commission, and until determined otherwise by the Legislature or the courts, are legally permitted but not without possible adverse legal consequences to the detriment of the City and other parties.

The VIRTUAL MEETING will be held through communication media technology with the members of the City Commission, City staff, any applicant making a presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the City Commission, as well as the applicant’s attorney and witnesses participating through video conferencing. This virtual meeting will be held on the Zoom platform used by the City Clerk for live remote participation. Members of the public may join and participate in the meeting in the following ways:

- via Zoom at (<https://zoom.us/j/3056636338>); and

- via a dedicated phone line that will be available so that any individual who does not wish (or is unable) to use Zoom, may listen to and participate in the **meeting by dialing +1-786-635-1003 Meeting ID: 3056636338**.

The public may view the meeting live without participating on the City's website: (<https://www.southmiamifl.gov/102/Agendas-Minutes>) ("Granicus") as well as Channel 667 on Atlantic Broadband or by AT&T U-Verse.

If you intend to present a document to be live streamed at the time of the meeting, you must send it to the Clerk on or before 3:00 p.m. 2 business days (not counting the day of the meeting) before the meeting in one of the following ways:

- Scan or photograph the document and send it as an attachment in an email to the City Clerk at npayne@southmiamifl.gov; or
- Scan or photograph the document and upload it to a flash drive and deliver the flash drive, along with your name, address, phone number, facsimile number (if any), and email address (if any), to the City Clerk at 6130 Sunset Drive, South Miami, FL 33143.

If you plan on participating in the meeting, either in person, if allowed, through the Zoom platform, or by teleconferencing, it would be helpful if you sign-up for the meeting by providing the City Clerk with the following information, via email at npayne@southmiamifl.gov or by calling the City Clerk at 305-663-6340, one business day (not counting the day of the meeting) before the meeting, on or before 4:00 p.m.:

- your name;
- whether you are a business owner;
- whether you are a resident of the City;
- physical address;
- phone number;
- facsimile number, if any;
- email address, if any; and
- a description of the item on the agenda upon which you intend to present your verbal comments/evidence (Topic); and
- if using Zoom, your Zoom screen name, which must be your real name, or;
- if using the teleconferencing option, the phone number you will be using to call into the meeting.
- Your ability, or lack thereof, to use the Zoom platform to attend the meeting virtually.
- **If the item to which you want to speak is quasi-judicial** and your face will not be appearing on the Zoom screen when you are called upon to be sworn in, or if you will be speaking using a telephone, you must, in addition to the other sign up information, deliver a copy of your Florida identification card or driver license or the page of a valid passport that has your photograph on it or other identifying documents as described in s. 117.05(5)(b)2, Fla. Stat., to the Clerk. Without this information, you will not be sworn in and will not be allowed to testify at the quasi-judicial hearing.

At the appropriate time, all participants who want to speak will be asked to raise their "virtual hand". If the Mayor/Chair requests that all or some speakers take their "virtual hands" down and if a participant fails to do so, or otherwise disrupts the meeting, the Mayor/Chair may permanently mute that persons microphone and video image for that meeting and said person will not be allowed to participant in that meeting. See the specific instructions below for raising your "virtual hand" using Zoom. If you have signed up in advance of the meeting you may be given priority ahead of others who did not sign up. In addition, by signing up you may also receive priority for the limited space available in the Commission Chambers. You will be called upon and you may speak on the Topic and present your evidence (physical (see special requirements for physical evidence) and testimonial) or comments through your choice of communication, either Zoom, teleconferencing or, if allowed, in person in the Commission Chambers using City provided Zoom connection to the meeting.

In addition to the foregoing, the City Commission Chambers at City Hall, located at 6130 Sunset Dr., will be open commencing at 6:30 p.m. on the day of the meeting in order to live stream public comment by those lacking an

ability to participate and be heard through their own communication media technology. Seating is limited and priority will be given to those who contact the City Clerk in advance of the meeting, establish their lack of ability to attend the meeting virtually using the Zoom platform and provide the Clerk with their sign-up information. **ONLY APPROXIMATELY 16 ATTENDEES WILL BE ALLOWED IN CHAMBERS SINCE MAYOR GIMENEZ'S EXECUTIVE ORDER 10-20 REQUIRES SOCIAL DISTANCING AND AT LEAST ONE PERSON NEEDS TO BE A MEMBER OF CITY STAFF.** A person will be present to receive into the record materials presented by those attendees; however, if you failed to deliver your documents in advance of the meeting, as required above, your documents will be made part of the public record but will not be presented to the other participants or be made part of a quasi-judicial record. The City will strictly enforce the operative provisions of all controlling Executive Orders relating to social distancing. No electronic device that emits any sound will be allowed to be used in Chambers unless it is muted for the duration of the meeting. If your device emits any sound and you fail to immediately silence it, or if it happens twice on that same day, you will be asked to leave the Chambers. No one with a cough, who has a fever or who is not properly wearing an appropriate facial covering over both the mouth and nose will be admitted. All facial coverings must always remain properly in place while in the building. Violators of any of the rules will be removed from the building for the remainder of the meeting. Persons shall be required to sit at least six (6) feet from one another and maintain six (6) feet of distance when standing in line to enter or exit the building, the restrooms, and the Commission Chambers and when standing to speak at the podium. The public shall exit City Hall as soon as possible after the meeting ends. These rules may be amended by the City Manager and the manager may add additional rules for the purpose of protecting the health, safety and welfare of the public and City officer and employees. A Uniform Police Officer will be present to ensure enforcement of all these rules.