

**CITY OF SOUTH MIAMI**  
**Environmental Review & Preservation Board**  
**Agenda**  
**Tuesday, January 3, 2023**  
**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, to protect the health, safety and welfare of its citizens, elected officials, appointed officers and administrative staff, and pursuant to the City of South Miami Code, Chapter 286.011, Fla. Stat, Executive Order Number 20-69, the City's Home Rule Powers, the City Manager's rules and regulation under her emergency powers pursuant to Chapter 14, of the City Code of Ordinances, and City Commission's powers pursuant to Chapter 252, Fla. Stat, and the City Commission's emergency resolutions, the City will be holding its Environmental Review and Preservation Board Meeting VIRTUALLY through communications media technology (CMT) until the state of emergency has ended or social distancing is no longer required by any relevant Executive Orders. Members of the Environmental Review and Preservation Board, City staff, City consultant and the applicant, 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 the meeting via Zoom at (<https://zoom.us/j/3056636338>) and participate.

In addition, a dedicated phone line 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 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. In order to participate you must follow the procedure found in the notice of the meeting that is posted at City Hall & also at <http://www.southmiamifl.gov/580/Public-Meetings-Notices>.

**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-2022-029**

Applicant: Martin A. Diaz-Yabor

Property Owner: Mario Martinez & Joanna Alemany

Location: 6622 SW 52 Terrace

**Request: Two-Story New Construction - Preliminary**

**VI. Approval of Minutes:** Tuesday, December 20, 2022

**VII. Next ERPB meeting:** Tuesday, January 17, 2023 at 8:30 a.m.

**VIII. Adjournment**

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**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.