

CITY OF SOUTH MIAMI
Planning Board
Comprehensive Plan Workshop Agenda
Tuesday, February 27, 2018
City Commission Chambers
7:00 P.M.

The City of South Miami Code of Ordinances, Section 8A-5, requires that all lobbyists, as defined in that section, who represent a principal must register with the City Clerk before engaging in any lobbying activities and, in most cases, pay an annual fee of \$500.00 and an additional \$100 for each additional issue. A "Principal is anyone who seeks to affect the action, decision or recommendation of the City Manager, City Personnel or City Board (including committees and other similar groups) on a matter that will foreseeably be heard or reviewed by the City Commission, or who seeks to affect the action, decision or recommendation of the City Manager or City Personnel on a matter that will foreseeably be heard or reviewed by a City Board. This applies to all persons who are retained with, and most who are retained without, compensation to influence any action, decision, recommendation as set forth above. There are some exceptions and exemptions. However, note that, notwithstanding the exemption for quasi-judicial hearings, the Miami-Dade Commission on Ethics has ruled that a representative of a principal, including the principal's attorney, at a quasi-judicial hearing in South Miami, is required to register as a lobbyist.

I. Call to Order and the Pledge of Allegiance to the Flag

II. Roll Call

III. Administrative Matters: None at this Time

IV. Workshop Items:

1. PB-18-004

Applicant: City of South Miami

An Ordinance amending the City of South Miami Comprehensive Plan to amend the goals, objectives, and policies for the following Comprehensive Plan Elements: Future Land Use, Transportation, Housing, Infrastructure, Conservation, Recreation and Open Space, Intergovernmental Coordination, and the Capital Improvement Element.

V. Public Comments/New Business

VI. Approval of the Minutes: None at this Time

VII. Future Meeting Dates: March 13, 2018

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.