

## Sanchez, Rodzandra (COE)

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Tuesday, January 16, 2018 11:09 AM  
**To:** Sanchez, Rodzandra (COE)  
**Subject:** Thomas Pepe, City Attorney, City of South Miami (Cone of Silence) INQ 17-273

[INQ 17-273 Pepe](#)

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Monday, December 11, 2017 12:08 PM  
**To:** 'Pepe, Thomas F.' <TPepe@southmiamifl.gov>  
**Cc:** Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>  
**Subject:** FW: Thomas Pepe, City Attorney, City of South Miami (Cone of Silence) INQ 17-273

Dear Mr. Pepe:

You have inquired whether the "Cone of Silence" applies to a competitive bid that would be issued by the South Miami Community Redevelopment Agency ("SMCRA"). We have discussed this matter over the phone and this email serves to memorialize our conversations.

### Background

The South Miami Community Redevelopment Agency ("SMCRA") was created by City of South Miami Ordinance No. 12-97-1633 ("SMCRA Ordinance"). The powers of the SMCRA are delegated by the Miami-Dade County Commission to the City Commission in accordance with Chapter 163, Part III, Florida Statutes. The SMCRA is composed of all of the members of the City Commission as well as two residents of the SMCRA area. The Mayor serves as the Chairperson and the Vice Mayor serves as the Vice Chairperson of the SMCRA Board. City of South Miami Ordinance No. 12-97-1633 §3.

The SMCRA is seeking to dispose of land, located within its designated area that is owned by the SMCRA. The sale of the land would occur via a competitive bid process in accordance with Chapter 163, Florida Statutes. The land would be redeveloped for affordable housing (Madison Square Affordable Housing project). The SMCRA will publish the intent to sell the property via a competitive bid process as outlined in Chapter 163, Fla. Stat. The SMCRA in this instance has authorized the SMCRA Director to create a SMCRA's Madison Square Project Selection Committee which will review the responses to the competitive bid process and make a recommendation to the SMCRA Board. The SMCRA Board will then make a decision regarding the approval of the winning proposal. This decision must be approved by the City Commission.

### Legal Analysis

Previously, the City of South Miami was covered by the County's Cone of Silence, Section 2-11.1(t)(4). In previous opinions interpreting the County Cone of Silence, the COE clarified that the Cone of Silence applies to all competitive processes and specifically applied the Cone of Silence to the SMCRA. See RQO 02-86. RQO 02-86 and INQ 13-65. However, the County Ethics Code provides that Municipalities may opt out of out of the County's Cone of Silence. See County Ethics Code §2-11.1(t)(4). In accordance with that Section, the City of South Miami amended the City's Code of ethics to add its own Cone of Silence in February of 2017. South Miami ORDINANCE NO, 03-17-2273 (Adding a Cone of Silence provision via the addition of Sec. 8A-7to the South Miami Ethics Code).

After reviewing the City of South Miami's Ethics Code in conjunction with the newly added Cone of Silence section, we find that the South Miami Cone of Silence applies to the SMCRA's competitive bid process for the sale of SMCRA land. This is because Section 8A-1 (a) of the City of South Miami Code specifies that the provision of the code shall

be applied in a cumulative manner, and Section 8A-1(b) of the City's ethics code specifies that the code will apply to autonomous boards such as the community redevelopment agencies. Thus the Cone of Silence would apply to competitive bid processes initiated by the SMCRA.

In the case of the SMCRA's issuing an RFP for the sale of land owned by the SMCRA to develop the Madison Square project, the cone of silence would be imposed on the date the SMCRA publishes the advertisement of the RFP. The RFP will include the requirements of the cone of silence in the RFP documents. The Cone of Silence would terminate at the beginning of the City Commission meeting at which the SMCRA's submittal of a written resolution is made to the City Commission. However, if the City Commission fails to approve the SMCRA resolution and if the SMCRA decides to re-evaluate its selection of the winning proposal without a new solicitation, the cone of silence would be re-imposed until the beginning of the City Commission meeting at which the SMCRA makes a resubmittal of the a written resolution seeking Commission approval of the sale.

This opinion is limited to the facts as you presented them to the Commission on Ethics, please contacts us if these facts change. Questions regarding the state ethics laws should be addressed to the State of Florida Commission on Ethics.

Best regards,

Gilma (Mimi) Diaz-Greco  
Staff Attorney



Miami-Dade Commission on Ethics and Public Trust  
19 W. Flagler Street, Suite 820  
Miami, FL 33130  
Tel: (305) 579-2594  
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[gdiazgr@miamidade.gov](mailto:gdiazgr@miamidade.gov)  
[www.facebook.com/MiamiDadeEthics](http://www.facebook.com/MiamiDadeEthics)

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**From:** Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]  
**Sent:** Monday, November 13, 2017 7:37 AM  
**To:** Diaz-Greco, Gilma M. (COE) <[Gilma.Diaz-Greco@miamidade.gov](mailto:Gilma.Diaz-Greco@miamidade.gov)>  
**Subject:** RE: Cone of Silence Ordinance and CRA

Here is the ordinance you requested.

Very truly yours,

*Thomas F. Pepe*

**City Attorney**, Board Certified by the Fla. Bar  
in City, County and Local Government Law.  
City of South Miami  
1450 Madruga Avenue, Ste 202,  
Coral Gables, Florida 33146  
Tel: (305) 667-2564  
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**From:** Diaz-Greco, Gilma M. (COE) [Gilma.Diaz-Greco@miamidade.gov]  
**Sent:** Monday, November 06, 2017 1:49 PM  
**To:** Pepe, Thomas F.  
**Subject:** RE: Cone of Silence Ordinance and CRA

Mr. Pepe:

Would you please send me the ordinance that establishes the SMCRA? I have the one that establishes the SMCRA advisory board, but not the one that establishes the SMCRA itself.

Thanks and regards,

Gilma (Mimi) Diaz-Greco  
Staff Attorney



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[www.facebook.com/MiamiDadeEthics](http://www.facebook.com/MiamiDadeEthics)

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**From:** Pepe, Thomas F. [<mailto:TPepe@southmiamifl.gov>]  
**Sent:** Friday, October 13, 2017 1:16 PM  
**To:** Diaz-Greco, Gilma M. (COE) <[Gilma.Diaz-Greco@miamidade.gov](mailto:Gilma.Diaz-Greco@miamidade.gov)>  
**Subject:** RE: Cone of Silence Ordinance and CRA

I failed to add that it is my opinion that the cone of silence does not apply since its purpose is to keep the members of the Commission or board from being influenced or from influencing the selection committee before the manager makes a recommendation. In the case of the CRA, there is no process for the manager to make a recommendation.

Thank you.

Very truly yours,

*Thomas F. Pepe*

**City Attorney**, Board Certified by the Fla. Bar  
in City, County and Local Government Law.  
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**From:** Pepe, Thomas F.  
**Sent:** Friday, October 13, 2017 1:05 PM  
**To:** Diaz-Greco, Gilma M. (COE)  
**Subject:** FW: Cone of Silence Ordinance and CRA

You had asked me for a copy a while back and I don't know if I sent you the City's cone of silence ordinance so I am attaching it.

I have a question? Is there a special rule for the cone of silence when the Community Redevelopment Agency ("CRA")pursuant to Section 163.380, the pertinent part of which is pasted below, or does the cone of silence not apply.

(3)(a) Prior to disposition of any real property or interest therein in a community redevelopment area, any county, municipality, or community redevelopment agency shall give public notice of such disposition by publication in a newspaper having a general circulation in the community, at least 30 days prior to the execution of any contract to sell, lease, or otherwise transfer real property and, prior to the delivery of any instrument of

conveyance with respect thereto under the provisions of this section, invite proposals from, and make all pertinent information available to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate a community redevelopment area or any part thereof. Such notice shall identify the area or portion thereof and shall state that proposals must be made by those interested within 30 days after the date of publication of the notice and that such further information as is available may be obtained at such office as is designated in the notice. The county, municipality, or community redevelopment agency shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out; and the county, municipality, or community redevelopment agency may negotiate with any persons for proposals for the purchase, lease, or other transfer of any real property acquired by it in the community redevelopment area. The county, municipality, or community redevelopment agency may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this part. Except in the case of a governing body acting as the agency, as provided in s. 163.357, a notification of intention to accept such proposal must be filed with the governing body not less than 30 days prior to any such acceptance. Thereafter, the county, municipality, or community redevelopment agency may execute such contract in accordance with the provisions of subsection (1) and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such contract.

As you can see, the CRA is authorized to dispose of property to a developer provided the CRA publish a notice of its intent to sell the property and allow others to present competing proposals. However, this done by the CRA board or at its direction and not the direction of the City Manager and the CRA board is the one who will review and approve of the winning proposal.

Under these circumstances how can the cone of silence work since there is not manager to make a recommendation?

Thank you.

Very truly yours,

*Thomas F. Pepe*

**City Attorney**, Board Certified by the Fla. Bar  
in City, County and Local Government Law.

City of South Miami  
1450 Madruga Avenue, Ste 202,  
Coral Gables, Florida 33146  
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**From:** Payne, Nkenga  
**Sent:** Thursday, March 02, 2017 11:17 AM  
**To:** [centori@miamidade.gov](mailto:centori@miamidade.gov); [cedeno@miamidade.gov](mailto:cedeno@miamidade.gov); [rodzand@miamidade.gov](mailto:rodzand@miamidade.gov); [ethics@miamidade.gov](mailto:ethics@miamidade.gov)  
**Cc:** Menendez, Maria M.; Pepe, Thomas F.  
**Subject:** Cone of Silence Ordinance

Good Morning,

The City of South Miami City Commission adopted Ordinance No. 03-17-2273 on February 17, 2017 (attached). This ordinance is for the purpose of regulating communication during certain phases of competitive solicitation and to establish a Cone of Silence. With this ordinance, the City of South Miami desire to opt out of the requirements of section 2-11.1(t) of the Miami-Dade County Cone of Silence ordinance. Please accept this email as our request to opt of Miami-Dade County's ordinance.

Thanks for your attention to this matter.

Please acknowledge receipt of this email.

Best regards,

*Nkenga "Nikki" Payne, CMC*  
*Deputy City Clerk*  
*City of South Miami*  
*6130 Sunset Drive*  
*South Miami, FL 33143*  
*(305)663-6340 office*  
*(305)663-6348 fax*  
[npayne@southmiamifl.gov](mailto:npayne@southmiamifl.gov)  
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