

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2009-54

AN ORDINANCE AMENDING CHAPTER 74 OF THE CITY CODE ENTITLED "TRAFFIC AND VEHICLES", IN PARTICULAR SECTION 74-360 ENTITLED "APPEAL TO HEARING OFFICER", REGARDING THE APPOINTMENT OF HEARING OFFICERS TO HEAR APPEALS OF CITATIONS, FOR THE PURPOSE OF ALLOWING ATTORNEYS TO SERVE AS HEARING OFFICERS AND EXCLUDING THE REQUIREMENT FOR RESIDENCY; PROVIDING FOR A REPEALER PROVISION; A SAVINGS CLAUSE; A SEVERABILITY CLAUSE, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 74-360 of the "Code of the City of Coral Gables", provides for appeals of citations issued for violation of the red light traffic control signals under the Chapter, and

WHEREAS, the City wishes to amend the Chapter to appoint attorneys as hearing officers and residency in the city shall not be a requirement to hear appeals of such citations.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE
CITY OF CORAL GABLES, FLORIDA:**

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. That Section 74-360 of the "Code of the City of Coral Gables" entitled "Appeal to hearing officer", shall be and is hereby amended to read as follows:

Sec. 74-360. Appeal to hearing officer.

The city's code enforcement hearing officers are authorized to consider appeals under this chapter, as set forth in sections 101-181 through 101-190 of the City Code. The city shall appoint attorneys with the appropriate experience and background to serve as hearing officers to hear appeals of such citations, and residency in the city shall not be a requirement to such appointment.

(1) The following shall be permissible grounds for an appeal:

- a. At the time of the infraction, the motor vehicle was not under the care, custody, or control of the motor vehicle owner or an individual with owner's consent, established pursuant to affidavit as provided in section 74-361.
- b. The motor vehicle driver was issued a citation by a law enforcement officer, which was separate and distinct from the civil violation issued under this section, for violating the steady red traffic control signal;
- c. The motor vehicle driver was required to violate the steady red traffic control signal in order to comply with other governing laws;
- d. The motor vehicle driver was required to violate the steady red traffic control signal in order to reasonably protect the property or person of another;
- e. The steady red traffic control signal was inoperable or malfunctioning; or
- f. Any other reason the hearing officer deems appropriate.

(2) The traffic control infraction review officer, or designee, shall testify at the appeal.

Then, the motor vehicle owner may present testimony and evidence.

(3) Recorded images indicating an intersection safety ordinance infraction, verified by the traffic control infraction review officer, or designee, are admissible in any proceeding before the city's hearing officer to enforce the provisions of this chapter, and shall constitute *prima facie* evidence of the violation.

(4) Unless an affidavit is provided pursuant to section 74-361 it is presumed the person registered as the vehicle owner with the Florida Department of Motor Vehicles or any other state vehicle registration office, or an individual having the owner's consent, was operating the vehicle at the time of an intersection safety ordinance infraction.

(Ord. No. 2007-35, § 2(10), 11-13-2007)

SECTION 3. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. That this ordinance shall become effective within ten (10) days following passage and adoption of same.

PASSED AND ADOPTED THIS SEVENTEENTH DAY OF NOVEMBER, A.D., 2009.

(Moved: Withers / Seconded: Anderson)

(Yea: Cabrera, Withers, Anderson, Slesnick)

(Majority (4-0) Vote)

(Absent: Kerdyk)

(Agenda Item: E-2)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ
CITY ATTORNEY