

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2010-08

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES AMENDING THE CITY CODE, CHAPTER 101, "ADMINISTRATION & ENFORCEMENT," ARTICLE VI, "CODE ENFORCEMENT", DIVISION 3, "SUPPLEMENTAL CODE PROCEDURES", SECTIONS 101-181 THROUGH 101-188, ALLOWING HEARING OFFICERS TO BE ATTORNEYS WHO ARE EITHER RESIDENTS OR MAINTAIN A BUSINESS ESTABLISHMENT WITHIN THE CITY LIMITS FOR A MINIMUM OF FIVE YEARS; ADDING THE LABEL SPECIAL MASTER TO HEARING OFFICER; FURTHER PROVIDING FOR A SEVERABILITY CLAUSE, REPEALER PROVISION, CODIFICATION, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Code sections on Code Enforcement provide that any resident of the City of Coral Gables, possessing certain reputation and experience, may become a hearing officer and the City would like to exclude the residency requirements and allow for attorneys to act as hearing officers for the City's code violations;

WHEREAS, the City has a desire to add the label Special Master to Hearing Officer to use interchangeably throughout the Code Enforcement sections of the City Code;

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

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. The City Code of the City of Coral Gables, Florida is hereby amended as to Chapter 101, "Administration & Enforcement," Article VI, "Code Enforcement," Division 3, "Supplemental Code Procedures," particularly Sections 101-181 through 101-188 to read as follows:

ARTICLE 2. DECISION MAKING AND ADMINISTRATIVE BODIES

Sec. 101-181. Civil offenses and penalties.

There is hereby created and established a code enforcement position to be filled by a Hearing Officer/Special Master to enforce the ordinances or codes listed in section 101-189 which are contained in and enacted pursuant to this Code.

101-182. Qualifications and removal of officers.

(a) Hearing Officers/Special Masters shall be attorneys—who reside or maintain a business establishment for a minimum of five (5) years within the City of Coral Gables who possess outstanding reputations for civic pride, interest, integrity, responsibility, and the appropriate legal experience or background. Residency in the City shall not be a requirement to such an appointment. Appointments shall be made by the City Manager or his designee on the basis of experience or interest in code enforcement. Such appointments shall be submitted to the city clerk for ratification.

(b) The City Manager or his designee shall appoint as many Hearing Officers/Special Masters as are deemed necessary. Appointments shall be made for a term of one year. Any Hearing Officer/Special Master may be reappointed at the discretion of the City Manager, subject to ratification by the clerk of the city commission. There shall be no limit on the number of reappointments that may be given to any individual Hearing Officer/Special Master; provided however, that a determination as to removal or reappointment must be made for each Hearing Officer/Special Master at the end of each of his one-year terms. The City Manager shall have authority to remove Hearing Officers/Special Masters with or without cause. Appointments to fill any vacancy shall be for the remainder of the unexpired term.

(c) Hearing Officers/Special Masters shall not be City employees but shall be compensated at a rate to be determined by administrative order.

(d) The City Attorney's Office shall serve as general counsel to the Hearing Officers/Special Masters. If an appeal is taken from any decision of the Hearing Officer/Special Masters, the City Attorney's Office shall represent the city at such proceedings. Sec. 101-185. Right of violators; payment of fine, right to appeal; failure to pay and correct, or appeal.

(a) A violator who has been served with a civil infraction notice shall elect either to:

(2) Request an administrative hearing before a Hearing Officer/Special Master to appeal the determination of the inspector that resulted in the issuance of the civil infraction notice.

(c) If the named violator, after notice, fails to pay the civil penalty and correct the violation (within the time specified), or to timely request an administrative hearing before a Hearing Officer/Special Master, such failure shall constitute a waiver of the violator's right to an administrative hearing before a Hearing Officer/Special Master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly. Sec. 101-186. Schedule and conduct of administrative hearing.

(c) The Hearing Officer/Special Master shall conduct hearings on a regularly scheduled monthly basis or more frequently upon request of the City Manager or his designee. No hearing shall be set sooner than 20 days from the date of service of the notice of infraction.

(d) All hearings before the Hearing Officer/Special Master shall be open to the public. All testimony shall be under oath. Assuming proper notice, a hearing may proceed in the absence of the named violator.

(f) The City Manager, or his designee, shall provide clerical and/or administrative support personnel for the Hearing Officer/Special Master to facilitate the proper issuance of civil infraction notices, processing and review of cases as may be reasonably required, and for proper performance of clerical and Hearing Officer/Special Master's duties.

(g) Each case before a Hearing Officer/Special Master shall be presented by the inspector or representative of the department issuing the violation.

(h) The hearing need not be conducted in accordance with the formal rules of evidence and those relating to witnesses. Any relevant evidence shall be admitted if the Hearing Officer/Special Master finds it competent and reliable, regardless of the existence of any common law or statutory rule to the contrary.

(j) The Hearing Officer/Special Master shall make findings of fact based on the evidence in the record alone. In order to make a finding upholding a code enforcement officer's determination that a violation exists, the Hearing Officer/Special Master must find that a preponderance of the evidence indicates that the violator was legally responsible for the violation of the relevant section of the ordinances or codes as cited, and that a violation does/did in fact exist.

(k) ... Upon presentation of relevant evidence by the named violator that the time for correction was not reasonable, the Hearing Officer/Special Master may make a redetermination as to the reasonableness of the time for correction contained in the civil infraction notice is excessive. If the Hearing Officer/Special Master determines that the time given for correction was insufficient, the penalty for a continuing violation may be calculated from the date determined by the Hearing Officer/Special Master to be the reasonable date for correction.

(m) The fact-finding determination of the Hearing Officer/Special Master shall be limited to whether the alleged violation did in fact occur and, if so, whether the person named in the civil violation notice is legally responsible for that violation. The Hearing Officer/Special Master shall either affirm or reverse the determination of the code enforcement officer as to the responsibility of the named violator for the correction of the ordinance or code violation. The Hearing Officer/Special Master may also modify the determination of the code enforcement officer as to the time for correction contained in the civil infraction notice, subject to the provisions of subsection (k) of this section. If the Hearing Officer/Special Master reverses the determination of the code enforcement officer and finds the named violator not responsible for the alleged violation in the civil infraction notice, the named violator shall not be liable for the payment of any civil penalty, absent successful appeal of the Hearing Officer/Special Master's ruling by the city. If the decision of the Hearing Officer/Special Master is to affirm the code enforcement officer's determination of violation, then the following elements may be included:

(n) The Hearing Officer/Special Master shall have the power to:

(o) A Hearing Officer/Special Master shall not conduct a hearing if the named violator, prior to the scheduled hearing date, files with a duly authorized city and county board of appropriate jurisdiction for administrative interpretation of the legal provisions on which the alleged violation was based. Upon exhaustion of the administrative review and finalization of the administrative order by such board or body, the Hearing Officer/Special Master may exercise all powers granted to him by this article. The Hearing Officer/Special Master shall not, however, exercise any jurisdiction over alleged code violations where a named violator has properly filed a request for administrative interpretation and review by such city or county board or body until such time for review has lapsed.

(p) The Hearing Officer/Special Master shall be bound by the interpretations and decisions of the duly authorized city and county boards of appropriate jurisdiction concerning the provisions within their respective jurisdictions. In the event such a board or body finds that the cited violation of the ordinance or code has not been properly interpreted, that provision upon which the violation is based, shall prohibit a Hearing Officer/Special Master from proceeding with the enforcement of the alleged violation. Sec. 101-188. Appeals.

(a) The named violator or the city may appeal a final order of a Hearing Officer/Special Master in the manner provided by law.

(b) In the absence of reversal of a Hearing Officer/Special Master's ruling by an appellate court of competent jurisdiction, the findings of the Hearing Officer/Special Master shall be conclusive as to a determination of responsibility for the ordinance or code violation, and such findings shall be admissible in any proceeding to collect unpaid penalties.

SECTION 3. SEVERABILITY.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith, be and the same, are hereby repealed.

SECTION 5. CODIFICATION.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 6. EFFECTIVE DATE.

SECTION 7. That this Ordinance shall become effective ten (10) days after final reading and adoption thereof.

PASSED AND ADOPTED THIS TWENTY-FIFTH DAY OF MAY, A.D., 2010.

(Moved: Withers / Seconded: Anderson)

(Yeas: Withers, Anderson, Cabrera, Kerdyk, Slesnick)

(Unanimous: 5-0 Vote)

(Agenda Item: E-1)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ
CITY ATTORNEY