



Policy and Procedures

for

ORLANDO STOPS Red Light Enforcement Program

City of Orlando, Florida

November, 2015

INTRODUCTION

The civil enforcement process for red light signal infractions provided herein is governed by section 316.0083, Florida Statutes (2014), as a supplemental method of enforcing traffic safety in the City of Orlando. This process is quasi-judicial---meaning "like court." A hearing officer hears and adjudicates cases involving red light signal infractions that are caught on camera and identified and prosecuted by the City's Orlando Stops Program.

ORLANDO STOPS PROGRAM

City of Orlando

RULES OF PROCEDURE

I. Jurisdiction

The hearing officer is appointed by City Council and shall have jurisdiction over matters pursuant to s. 316.0083, Florida Statutes. Specifically, the hearing officer shall decide whether a Petitioner has committed a red light infraction and adjudicate accordingly. The hearing officer shall also hear and rule upon motions.

The hearing officer shall be a member in good standing of The Florida Bar and shall be subject to the Code of Judicial Conduct.

A person who is issued an NOV is referred to as “Petitioner” in accordance with s. 316.0083(5)(c), Fla. Stat.

II. Clerk for the Hearing Officer

A. The Clerk for the hearing officer shall be provided by the Code Enforcement Division of the City of Orlando. The Clerk shall, among other things, schedule and reschedule hearings, cancel hearings, prepare the agenda for each hearing, maintain a record of proceedings, prepare and transmit information to the Department of Highway Safety and Motor Vehicles (DHSMV) and camera vendor, deliver hearing agendas, and in general, serve as the liaison between the hearing officer and the City of Orlando.

B. The Clerk shall send each month’s agenda to the hearing officer who is presiding that month at least one week prior to the scheduled hearing date. If the hearing officer has a conflict* with a case(s) listed on the agenda, the hearing officer shall notify the Clerk at least three (3) days prior to the hearing date. The Clerk will then schedule that case before another hearing officer and send notice to the Petitioner. In that event, the Petitioner shall not be penalized for the rescheduling of his or her case.

III. Notice of Violation

A. The Notice of Violation (NOV) for a red light infraction shall be issued to the

* Judicial Code of Conduct, Canon 3(B)(1) and (E).

registered owner of the vehicle that committed the infraction and shall be sent to the owner by first class mail. [See § 316.0083(1)(b)1.a., Florida Statutes (2014)]

B. Petitioners who want to challenge the NOV must file with the Clerk a Request for Hearing form within 60 days from the date of the NOV. This form shall not be sent to the Clerk via facsimile transmission or email, but shall be sent by regular U.S. Mail. Once a hearing is scheduled, the Clerk shall send an Administrative Hearing Notification Letter (“notice of hearing”) to the Petitioner by first class mail at least fifteen (15) days prior to the scheduled hearing date. The Clerk shall also promptly provide a copy of the notice of hearing to the Traffic Infraction Enforcement Officer (TIEO).

C. Once a hearing is scheduled, the TIEO must transmit a copy of the NOV to the Clerk within fourteen (14) days from the date of the notice of hearing.

D. The Clerk will place the case on the appropriate month’s hearing agenda. The Petitioner may cancel the hearing any time prior to the case being heard; however, a \$50.00 fee will be imposed in addition to the \$158 fine amount. Upon receipt of payment, the Clerk will cancel the hearing and close the case.

E. Petitioners are allowed to reschedule a hearing one time upon written request. A form for rescheduling a hearing is available on the City’s website for Petitioners to complete and submit. The written request must be submitted to the Clerk at least five (5) days prior to the scheduled hearing date. If the request is submitted by regular U.S. mail, the date of submittal will be the date postmarked on the envelope.

F. Petitioners who want to submit an affidavit for one of the statutory defenses (“the Affidavit”) pursuant to s. 316.0083(1)(d), Fla. Stat., must file the Affidavit with the Orlando Stops Program no later than the due date indicated on the NOV. Upon receipt of the Affidavit and any requisite supporting documentation, the City shall determine whether the Affidavit was done in accordance with the statute.

If the City determines that the Affidavit did not comply with the statutory requirements, the City shall return the Affidavit to the Petitioner with a letter providing the reasons for noncompliance.

If an Affidavit is submitted in accordance with s. 316.0083(1)(d), Fla. Stat., and the evidence provided in support of the Affidavit is conclusive, the City shall administratively dismiss the NOV based upon the Affidavit. The City shall send an Administrative Review Dismissal Letter of the NOV to the Petitioner by regular U.S. mail and the case will be closed.

If the Affidavit transfers liability to the operator of the vehicle at the time of the infraction in accordance with s. 316.0083(1)(d)2.a., Fla. Stat., the City shall dismiss the

NOV against the owner of the vehicle and issue a new NOV to the person named in the Affidavit within 30 days from the date of receipt of the Affidavit. Notably, s. 316.0083 only authorizes the owner of the vehicle to submit this type of Affidavit. Therefore, a second affidavit submitted by the person named in the first Affidavit, transferring liability to another operator shall not be accepted.

With the exception of Affidavits that transfer liability, if the TIEO suspects an Affidavit contains false information, the TIEO may schedule a hearing and a notice of hearing shall be sent to Petitioner.

IV. Hearings

A. Cases will be called in the order determined by the hearing officer at his or her discretion.

B. Petitioners cannot submit payment for the fine amount associated with the NOV and request a hearing challenging the NOV simultaneously. If payment for the NOV is received and a hearing is also scheduled, the hearing will be deemed canceled and the Petitioner will be charged an additional \$50.00 fee.

C. The following procedures shall be observed during the hearings:

1. The Petitioner (including their duly authorized representative), the TIEO handling the case, and all other witnesses who will be providing testimony or offering other evidence shall be sworn.

2. Formal rules of evidence shall not apply at the hearing; however fundamental due process will be afforded. Irrelevant and unduly repetitious evidence may be excluded.

3. The TIEO shall present the City's case first, which includes the presentation of the video or photographic images of the infraction. [*See § 316.0083(5)(d), Florida Statutes*]

4. The Petitioner, or their duly authorized representative, shall present his or her case, including any and all evidence.

5. Both parties will have an opportunity to cross-examine parties or witnesses offering testimony or other evidence at the hearing.

6. Any evidence that the Petitioner or a witness presents before the hearing officer may be admitted by the hearing officer and submitted to the Clerk at the time the case is heard.

7. The hearing officer may question any party or witness or call any witness to testify that he or she feels is necessary to understand the factual and legal allegations of the case.
8. The hearing officer may, at his or her discretion, and at any time during the hearing, request further information from either party or witness.
9. The hearing officer may continue any hearing to a date certain at a regularly or specially scheduled hearing.
10. The hearing officer shall review the video and photographic images of the infraction. *[See § 316.0083(5)(d), Florida Statutes]*
11. Upon hearing and reviewing all evidence, the hearing officer may immediately adjudicate the case in open session or defer ruling to a date certain.
12. Based on the evidence presented at the hearing, the hearing officer shall determine whether the Petitioner committed the red light infraction. If the Petitioner is found to have committed the infraction, the hearing officer shall enter a Final Administrative Order containing, among other things, the fine amount, any administrative charges up to \$250.00, and a payment due date from the date of the Order. If the Petitioner is found to not have committed the infraction, the hearing officer shall enter a Final Administrative Order to that effect and the Clerk shall dismiss the case.
13. Final Administrative Orders shall be reduced to writing and sent to the Petitioner by regular U.S. mail no later than five (5) working days from the date of the hearing. If the Petitioner is present at the hearing, the Clerk may hand-deliver the written order to the Petitioner in addition to mailing the order.
14. If the Petitioner, or his or her legal counsel, fails to appear at the scheduled hearing and there is no record of receiving a request from the Petitioner to reschedule the hearing, and a notice of the hearing was sent to the Petitioner, the hearing officer shall proceed to hear and adjudicate the case in the Petitioner's absence. If the Petitioner is found to have committed the infraction, a Final Administrative Order shall be entered containing the fine amount, any administrative charges up to \$250.00, and a payment due date as determined by the hearing officer. If the Petitioner is found to not have committed the infraction, the hearing officer shall enter a Final Administrative Order to that effect and the Clerk shall dismiss the case.
15. The hearing officer has the statutory authority to impose administrative charges in an amount not to exceed \$250.00 in addition to the statutory fine amount against a Petitioner who is found to have committed a red light signal infraction.

16. The hearing officer may, at his or her discretion, permit the Petitioner to pay the amount assessed on the Final Administrative Order in two installments. The hearing officer shall provide a time period in the Order by which each installment must be paid. Such payments shall be made by cash or money order only.

17. The hearing officer has the authority to address behavior he/she feels is disruptive to the proceedings and may order the law enforcement officer on duty to remove the individual(s) causing the disruption from the proceedings.

18. The hearing officer may order the re-issuance of the NOV to the owner of the vehicle in instances where evidence is presented that an Affidavit submitted by the owner contains false information.

V. Transfers of Liability

A. The Petitioner may transfer liability to the operator of the vehicle at the time of the infraction by submitting an Affidavit in accordance with s. 316.0083(1)(d)2.a., Fla. Stat., no later than the due date indicated on the NOV to the Orlando Stops Program.

B. Upon receipt of the Affidavit, the City shall transfer the liability and send an NOV to the person named in the Affidavit ("transferee") within thirty (30) days from date of receipt of the Affidavit as long as the Affidavit complies with s. 316.0083(1)(d)2.a., Fla. Stat.

C. Section 316.0083 only authorizes the owner of the vehicle to submit an Affidavit. Therefore, a second Affidavit submitted by the transferee transferring liability to another operator of the vehicle shall not be accepted. If the transferee claims that the Affidavit submitted by the owner contains false information, the TIEO shall inform the person that they may challenge the NOV by submitting a Request for Administrative Hearing form and offer such evidence at the hearing.

In the event of a hearing and the hearing officer believes sufficient evidence has been presented that the Affidavit submitted by the owner is false, the hearing officer may dismiss the NOV against the transferee and order the re-issuance of the NOV to the owner of the vehicle. The hearing officer may also require the transferee to sign a sworn statement at the hearing. However, if the hearing officer believes the evidence presented by the transferee is insufficient, the hearing officer has the discretion to either adjudicate the case or defer ruling for a period of days for the transferee to submit sufficient evidence for the hearing officer to consider. If the hearing officer orders the latter and the transferee fails to submit such evidence within the time period prescribed by the hearing officer, the hearing officer will adjudicate the case accordingly.

D. Any transfers of liability that are done administratively by the City or ordered by the hearing officer shall be noted in the case file.

E. For rental car companies, upon receipt of the company's Affidavit, the City shall transfer the liability and send an NOV to the person named in the Affidavit within thirty (30) days from date of receipt of the Affidavit as long as the Affidavit complies with s. 316.0083, Florida Statutes.

VI. Nonpayment or Partial Payment

A. If the NOV has not been paid by the due date stated on the NOV, and no hearing has been requested and no Affidavit has been submitted within the prescribed 60-day period, the City shall issue a Uniform Traffic Citation (UTC) within thirty (30) days of the expiration of the 60-day period. The City shall also transmit a copy of the UTC to the clerk of court within five (5) days of the date of the UTC.

B. If no payment has been submitted pursuant to the hearing officer's Final Administrative Order, the Clerk shall provide the name, address, and the driver's license, or vehicle registration number in the case of a business entity, of the Petitioner to the DHSMV within ten (10) days from the date payment was due.

C. If only partial payment is received and the balance has not been paid by the due date specified in the hearing officer's Final Administrative Order, the Clerk shall provide name, address, and the driver's license, or vehicle registration number in the case of a business entity, of the Petitioner to the DHSMV within ten (10) days from the date payment was due.

VII. Non-attendance of a Scheduled Hearing

A. If the Petitioner, or his or her legal counsel, schedules a hearing with the Clerk and fails to attend the hearing, and there is no record of receiving a request from the Petitioner to reschedule the hearing, and a notice of the hearing was sent to the Petitioner, the hearing officer shall proceed to hear and adjudicate the case in the Petitioner's absence.

B. The Clerk shall provide name, address, and the driver's license, or vehicle registration number in the case of a business entity, of the Petitioner to the DHSMV within ten (10) days from the date of the hearing.

VIII. Motions

All motions must be submitted in writing to the Clerk at least ten working (10) days prior to the hearing date in order to be considered by the hearing officer. Oral motions will not be considered and any written motions submitted less than 10 days before the scheduled hearing will not be considered.

IX. Appeals

Judicial review of the hearing officer's Final Administrative Order is done by filing a Notice of Appeal within thirty (30) days from the date of the order in the Orange County Circuit Court for the Ninth Judicial Circuit pursuant to s.162.11, Florida Statutes, and in accordance with the Florida Rule of Appellate Procedure 9.190.

In addition, a copy of the Notice of Appeal shall be provided to the Clerk for the local hearing officer the same day the Notice is filed in circuit court pursuant to the Florida Rules of Appellate Procedure.

Upon receipt of the Notice of Appeal, the Clerk shall notify the camera vendor via the vendor's appeal module so that the Petitioner's information is not sent to the DHSMV for a license tag registration hold.

X. Miscellaneous

A. All hearings shall be open to the public in accordance with the provisions of the Florida "Sunshine Law", Chapter 286 of the Florida Statutes.

B. All records of the hearings shall be open to public examination, inspection and copying in accordance with the provision of the Florida "Public Records Law", Chapter 119 of the Florida Statutes.

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