

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2015-___

AN ORDINANCE OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA, CREATING A FALSE CLAIMS AND PRESENTATIONS ORDINANCE TO PROHIBIT FALSE OR INCOMPLETE PRESENTATIONS TO OR FALSE OR FRAUDULENT CLAIMS AGAINST THE CITY OF CORAL GABLES, PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Coral Gables wishes to insure that individuals presenting before the City Commission or a City Board, or providing information to City Staff, are truthful and forthcoming in the information they provide and which is relied upon by the City; and

WHEREAS, the City Commission of the City of Coral Gables wishes to deter persons from causing the City to pay claims that are false, fraudulent, or inflated; and

WHEREAS, the City Commission of the City of Coral Gables wishes to provide remedies for obtaining damages and civil penalties for the City, when false or incomplete information is provided by an individual, during a presentation to the City Commission or a City Board or Committee, that is relied upon by the City; and

WHEREAS, the City Commission of the City of Coral Gables wishes to provide remedies for obtaining damages and civil penalties for the City when money is sought or obtained from the City by reason of a false claim.

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

SECTION 1. That the foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance upon adoption hereof.

SECTION 2. That Chapter 39 “False Claims and Presentations Ordinance” of the Code of the City of Coral Gables, Florida, be hereby created to read as follows:

CHAPTER 39. FALSE CLAIMS AND PRESENTATIONS ORDINANCE

Sec. 39-1. Definitions.

The following terms when used in this Chapter shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

- (1) *Presentation* means any presentation made by an individual to the City Commission, or a City Board, whether during a legislative item or a quasi-judicial proceeding, as well as any request made to City Staff.
- (2) *City* is the City of Coral Gables and includes the City Commission, City Boards, and City Staff.
- (3) *City Board* includes all City Boards and Committees.
- (4) *City Staff* includes the City Manager, City Attorney, and City Clerk, as well as all other employees, officers, and agents of the City.
- (5) *Claim* means any invoice, statement, request, demand, lawsuit, or action under contract or otherwise, for money, property, or services made to any employee, officer, or agent of the City, or to any contractor, grantee, or other recipient if any portion of the money, property or services requested or demanded was issued from, or was provided by, the City.
- (6) *Claimant* means any person who brings, submits, files, maintains, or pursues a claim.
- (7) *City* means the government of the City of Coral Gables or any department, division, commission, planning agency, board or instrumentality of the City.
- (8) *Knowing or knowingly* means that a person:
 - (a) Has actual knowledge of the information;
 - (b) Acts in deliberate ignorance of the truth or falsity of the information;
 - (c) Acts in reckless disregard of the truth or falsity of the information;
 - (d) Provides incomplete information by omitting pertinent facts in an attempt to deceive.
- (9) *Person* means any natural person, corporation, firm, association, organization, partnership, agency, limited liability company, business, or trust.

Sec. 39-2. Presentation.

- (1) Persons presenting before the City Commission, City Board, or City Staff, are duty-bound to be truthful.
- (2) In no event may a person presenting before the City Commission, City Board, or City Staff knowingly make a false or incomplete statement to the Commission, Board or City Staff member.
- (3) If the City relies on those statements to its financial detriment, the City Attorney may initiate an action against said person as delineated herein.

Sec. 39-3. Certification of claims.

- (1) Upon the request of the City, the person submitting the claim shall, within thirty (30) days, including Saturdays, Sundays, and legal holidays, submit a certified claim as

defined by this section. A “certified claim” shall be made under oath by a person duly authorized by the claimant and shall contain a statement that:

- (a) The claim is made in good faith;
 - (b) The claim’s supporting data are accurate and complete to the best of the person’s knowledge and belief;
 - (c) The amount of the claim accurately reflects the amount that the claimant believes is due from the City; and
 - (d) The certifying person is duly authorized by the claimant to certify the claim.
- (2) Failure to provide the requested certification within the prescribed thirty (30) day period shall constitute a forfeiture of the entire claim.

Sec. 39-4. Liability for false presentation; penalties.

- (1) The following action(s) shall constitute a violation of this article:
 - a. Any person who knowingly presents false information to the City Commission and on which the City relies to its financial detriment;
 - b. Any person who knowingly omits pertinent information resulting in incomplete information being given to the City Commission and on which the City relies to its financial detriment;
 - c. Any person who knowingly presents false information to a City Board or City Staff and on which the City relies to its financial detriment;
 - d. Any person who knowingly omits pertinent information resulting in incomplete information being given to a City Board or City Staff and on which the City relies to its financial detriment.
- (2) Any beneficiary of an inadvertent falsity or incomplete information to the City, who subsequently discovers the falsity or incompleteness of the information, and who fails to disclose the same to the City within thirty (30) days of discovering the error, shall also be found to have submitted a false presentation to the City.
- (3) Any person found to have made a knowingly false or incomplete presentation to the to the City Commission, City Board, or City Staff shall:
 - a. Be liable to the City for an amount equal to three (3) times that part of the financial detriment suffered by the City;
 - b. Be liable to the City for all costs and fees (including, without limitation, reasonable legal, expert, and consulting fees) incurred by the City to review and defend any claim resulting from the falsity or incomplete information; and
 - c. Be subject to debarment from City lobbying or contracting for a period not to exceed five (5) years.
- (4) Liability under this section shall be joint and several for any act committed by two (2) or more persons.

Sec. 39-5. Liability for false claims; penalties.

- (1) The following action(s) shall constitute a violation of this article:
 - (a) Any person who knowingly presents or causes to be presented to the City, or to any officer, employee, agent, or consultant of the City, a false or fraudulent claim for payment or approval;

- (b) Any person who knowingly makes, uses, or causes to be made or used, a false record or statement to get a false, fraudulent, or inflated claim paid or approved by the City;
 - (c) Any person who conspires to defraud the City by facilitating the payment of a false, fraudulent, or inflated claim allowed or paid by the City;
 - (d) Any person who delivers, with the intent to defraud the City, goods or services of different quality or quantity than that specified in the applicable contract or specification;
 - (e) Any person who is authorized to make or deliver a document certifying receipt of property used, or to be used, by the City and, intending to defraud the City, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - (f) Any person who knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer, employee, or agent of the City who lawfully may not sell or pledge the property; or
 - (g) Any person who knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City.
- (2) Any beneficiary of an inadvertent submission of a false claim to the City, who subsequently discovers the falsity of the claim, and who fails to disclose the falsity of the claim to the City within thirty (30) days of discovering the error, shall also be found to have submitted a false claim to the City.
- (3) Any person found to have submitted a false claim to the City shall:
- (a) Be liable to the City for an amount equal to three (3) times that part of the claim which is false, fraudulent, or inflated;
 - (b) Immediately, fully, and irrevocably forfeit the entire amount of the claim;
 - (c) Be liable to the City for all costs and fees (including, without limitation, reasonable legal, expert, and consulting fees) incurred by the City to review, defend, and evaluate the claim; and
 - (d) Be subject to debarment from City contracting for a period not to exceed five (5) years. Additionally, any person who certified a claim later found to be false shall be subject to debarment from City contracting for a period not to exceed five (5) years.
- (4) Liability under this section shall be joint and several for any act committed by two (2) or more persons.

Sec. 39-6. Civil actions for false claims.

If the City Attorney finds that a person has violated or is violating these provisions, a civil action may be brought against the person on behalf of the City consistent with the City Attorney's authority to bring civil actions in sections 2-201(e)(2) of the City Code.

Sec. 39-7. Expenses; attorney's fees and costs.

The City shall be entitled to an award of its attorneys' fees and costs for enforcement of this ordinance, including for any civil suit in which it is the prevailing party.

Sec. 39-8. Innocent claimant affirmative defense.

The provisions of this article shall not apply if the claimant can demonstrate by a preponderance of the evidence each of the following facts:

- (1) During a presentation, the claimant did not *knowingly* give false or incomplete information to the City Commission, City Board, or City Staff;
- (2) The City did not suffer a financial detriment as a proximate result of the false or incomplete information given during a presentation;
- (3) The claimant submitted or caused to have submitted the claim to or against the City reasonably believing that such claim was free of any material misstatements, or exaggerated, inflated, or unsubstantiated assertions or damages;
- (4) The claimant had no reasonable basis to doubt the truth, veracity, or accuracy of such claim at the time it was submitted;
- (5) Prior to submitting the claim, the claimant diligently investigation the facts underlying such claim and prepared the claim in a reasonable manner given all the relevant information available; and
- (6) When information indicating that any element, statement, or allegation in the claim was false or misleading first became available, such claimant, within five (5) business days of discovering the falsity of the claim, took immediate steps to modify, correct, or withdraw such claim and provided the City with immediate notice thereof.

Sec. 39-9. Other Remedies

- (1) A violation of this Chapter may be remedied in the manner provided in this Chapter. This remedy is cumulative with other remedies, however, and is not intended to be the exclusive remedy that can be used to address conduct that violates this Chapter.
- (2) A violation of this Chapter also constitutes a Code Enforcement violation and may be prosecuted as such.
- (3) This Chapter does not limit the authority of law enforcement to enforce criminal law in any manner.

Sec. 39-10. Immunity

The City and its officers, employees, and agents have immunity for any actions taken in accordance with this ordinance.

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, 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. Specifically, _____

SECTION 6. EFFECTIVE DATE.

This ordinance shall become effective upon adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, A.D., 2015.

APPROVED:

JIM CASON
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

CRAIG E. LEEN
CITY ATTORNEY