

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2015-32

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 A REPEALER PROVISION, SEVERABILITY CLAUSE, 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.
 - (e) In addition to the above stated penalties, the City Commission may revoke any approvals granted in reliance on any false claim or presentation made by an applicant.”
- (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, the addition of Chapter 39.

SECTION 6. EFFECTIVE DATE.

This ordinance shall become effective upon adoption.

PASSED AND ADOPTED THIS TENTH DAY OF NOVEMBER, A.D., 2015.

(Moved: Quesada / Seconded: Keon)

(Yeas: Quesada, Slesnick, Keon, Lago, Cason)

(Unanimous: 5-0 Vote)

(Agenda Item: E-3)

APPROVED:



JIM CASON
MAYOR

ATTEST



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:



CRAIG E. LEEN
CITY ATTORNEY

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

M E M O R A N D U M

TO: Craig Leen, City Attorney
Miriam Ramos, Deputy City Attorney

FROM: Yaneris Figueroa, Assistant City Attorney

RE: Scrivener Error- City Code Chapter 39 "False Claims and Presentation Ordinance."

DATE: May 9, 2016

Craig,

In reviewing City Code Chapter 39, "False Claims and Presentation Ordinance," it appears there was an omission in codification with respect to Section 39-5. This omission should be corrected pursuant to your authority under City Code Section 2-201(e)(9).

Chapter 39 addresses false claims and presentations made to City Staff and/or the City Commission. Section 39-5 establishes the penalties for making said false claims or presentations. In pertinent part, Section 39-5 states as follows:

- (c) Any person found to have submitted a false claim to the city shall:
- (1) Be liable to the city for an amount equal to three times that part of the claim which is false, fraudulent, or inflated;
 - (2) Immediately, fully, and irrevocably forfeit the entire amount of the claim;
 - (3) 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
 - (4) Be subject to debarment from city contracting for a period not to exceed five 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 years.

The City Commission approved this item, on first reading, on October 27, 2015. At the hearing, the City Commission approved the addition of language that would allow the City Commission to revoke any approvals that were granted based on false claims and/or presentations made the applicant. Indeed, the transcript of the hearing supports this, as you indicated to the City Commission that "[a]nother provision we'd like to add to this is that, the City without going to court can revoke the approval." You further clarified this point to the Mayor and stated "you are having a hearing on a conditional use review and you are considering

a condition of approval...let's say they tell you [something], let's say it turns out to be false. This would allow you to revoke the approval." The City Commission then approved the item in a 5-0 vote. In discussing the item on second reading, the City Commission did not provide any additional discussion and approved the item in a 5-0 vote.

As you can see from the above penalties, the revocation of any approvals granted based on the false claim or presentation was unintentionally omitted. Accordingly, Section 39-5 should be corrected to include the following provision: "(e) In addition to the above stated penalties, the City Commission may revoke any approvals granted in reliance on any false claim or presentation made by an applicant." This omission should be corrected pursuant to your authority under City Code Section 2-201(e)(9).

Davis, Yolande

From: Foeman, Walter
Sent: Wednesday, May 11, 2016 11:19 AM
To: Davis, Yolande
Subject: FW: Section 39-5 - Scrivener's Error
Attachments: Section 39-5 - Scrivener's Error.pdf; Commission Transcript - Section 39-5.pdf

Good Morning Yoli,
Please attach this advisory opinion in the back of the revised legislation, and make the necessary amendment per instruction by the City Attorney.

Thanks.

From: Leen, Craig
Sent: Wednesday, May 11, 2016 10:12 AM
To: Foeman, Walter; Urquia, Billy
Cc: Ramos, Miriam; Figueroa, Yaneris
Subject: Section 39-5 - Scrivener's Error

Mr. Clerk,

The City Attorney is authorized under section 2-201(e)(9) of the City Code to make corrections to the Code to address scrivener's errors. As discussed in the attached memo, and based on the attached transcript of the Commission proceedings, section 39-5 of the City Code must be corrected to add a subsection (e) that states as follows:

(e) In addition to the above stated penalties, the City Commission may revoke any approvals granted in reliance on any false claim or presentation made by an applicant.

Please inform the Municipal Code Corporation so it can be corrected online. Also, please prepare a corrected ordinance for execution.

Craig E. Leen, City Attorney
*Board Certified by the Florida Bar in
City, County and Local Government Law*
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**City of Coral Gables City Commission Meeting
Agenda Item E-1
October 27, 2015
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

**Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick**

City Staff

**City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia**

Public Speaker(s)

Agenda Item E-1 [Start: 11:10:05 a.m.]

An Ordinance of the City 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.

Mayor Cason: Let's go to E-1.

City Attorney Leen: Thank you Mr. Mayor. Item E-1 is a public hearing item; it's an Ordinance on First Reading. It's An Ordinance of the City 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. It's an ordinance that was sponsored by the City Attorney's Office, so I'll just briefly introduce it to you. This ordinance is based on a

county ordinance of a similar name, a false claims and presentation ordinance. What this does, I'm going to talk about it in three parts. First, when someone speaks to City staff or most importantly to the City Commission in seeking an approval or presents a claim to us through our risk manager or through the City Attorney's Office, often this is not done under oath. As you know, if a statement is made under oath, it's under penalties of perjury and you can generally assume that someone is telling the truth. That doesn't always mean they are telling the truth, but they can be penalized if they are not and they state an oath to tell the truth. What this Code does is it puts everyone on notice that they are always required to tell the truth when they present matters to the City of Coral Gables, and if they do not tell the truth, commit a misrepresentation or an admission and the City relies on that to its detriment, the City will be able to take action to fix that, and the City would fix it in two different ways. First, the City can, if it's a claim that's made to the City, we can ask the person to certify the claim and that means they basically have to verify its stated under oath. If they fail to do that they lose the claim after 30 days, the claim is forfeit. So that's one, so it makes people tell the truth about claims. Two, if there is an omission that's made and they learn of the omission, they have 30 days to fix the omission, and if they don't they are held liable for the false claims ordinance. If they commit the misrepresentation or omission and this causes harm to the City, there are two types of remedies. First, the City can sue for treble damages, actually there are three remedies. The City can sue for treble damages, what that means is, let's say someone comes here and tells the City that something happened and they have a claim and let's say its worth \$70,000 and the City says we recognize your claim and they direct the awarding of a settlement or it could be the City Attorney or the City Manager direct the awarding of a settlement of that amount and turned out to be false, and we find that out, we can then sue the individual for three times the amount, plus our attorney's fees and cost which would be \$210,000, and this is a recognized form of cause of action. When I was speaking to the Vice Mayor, he had mentioned that there is the Federal Fraudulent Claims Act, there is obviously a county one which this is based on, it's a little more narrow in some ways, but it's based on it, and in some ways its broader and I'll talk about that in a second. The second thing that we can do and this was raised by the Vice Mayor in our discussion and I'm adding it to the item for second reading, if someone comes before the Commission and presents a request for development approval, whether as-of-right through the Board of Architects like you saw today, or whether it's

a conditional use approval where they are requesting your approval as a Commission, and they tell you something that is false. Another provision we'd like to add to this is that, the City without going to court can revoke the approval, if the Commission in a hearing makes a finding after hearing evidence from both sides that there was something false that was stated that was material to the decision. So that will always give you that ability to trust people, I know you trust people, but you also have to be skeptical because sometimes there is a difference of opinion when people come before you and if you decide to say, you know we are going to accept your testimony and it turns out not to be true, it does give the City a remedy to fix what happened.

Mayor Cason: And I think we've had, I can recall two cases of that in the last year; and there is another possibility too and I think we discussed it, I don't know if you had been able to research it, but we gave maybe four years ago a second Homestead Exemption to people that claimed to have \$26,000 or more income, less income, own the house and then lived in it for "X" number of years and its administered by the Property Appraiser Board but we end up losing the revenue and I think probably just statements, maybe not verified, so there could be some very specific cases where money is at stake for the City.

City Attorney Leen: Exactly. Let's say for example there is – you are having a hearing on a conditional use review and you are considering a condition of approval. Let's say you want to do something related to the setback or there is some protection you need, like you want them to fix a curb or you want them to do something and let's say they tell you we've already done it and that's false, let's say it turns out to be false. This would allow you to revoke the approval; it would also allow you to, instead fix it as the City and then sue them for treble damages for whatever the cost would be. So this is a useful ordinance and I always thought it was interesting that we didn't have one because the county did and they do use it occasionally and it does protect against something important which is the City recognizes the First Amendment and the right to petition the Commission, but we expect that it be done truthfully.

Mayor Cason: This is a public hearing; do we have any speaker cards Mr. Clerk?

City Clerk Foeman: No Mr. Mayor.]

Mayor Cason: So we'll close the public hearing. Hopefully we'll never have to use this, but it's another tool, another arrow...in case we have to.

City Attorney Leen: Yes Mr. Mayor.

Mayor Cason: Any discussion? Motion?

Commissioner Lago: I'll make a motion.

Mayor Cason: Commissioner Lago makes the motion, the Vice Mayor seconds. City Clerk.

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 11:16:06 a.m.]