

1 EXHIBIT 1

2 ORDINANCE NO. 2018 -

3 AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE  
4 CITY OF HALLANDALE BEACH, FLORIDA, REPEALING CHAPTER 8,  
5 ARTICLE VIII "FALSE CLAIMS ORDINANCE" AND AMENDING  
6 CHAPTER 19 "OFFENSES AND MISCELLANEOUS PROVISIONS," TO  
7 CREATE ARTICLE V "FALSE CLAIMS" PROVIDING FOR A CAUSE OF  
8 ACTION FOR THOSE THAT REPORT FALSE CLAIMS AND  
9 SPECIFYING WHISTLEBLOWER PROTECTIONS; PROVIDING FOR  
10 CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR  
11 CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

12 WHEREAS, the False Claims laws deter fraudulent claims and provide a remedy for a  
13 government entity to recoup falsely claimed monies; and

14 WHEREAS, the City's current False Claims Ordinance lacks protections for employees  
15 who report fraudulent activities and may potentially be limited to construction contracts due to its  
16 location in the Code, unnecessarily complicating enforcement efforts; and

17 WHEREAS, the Mayor and City Commission desire to explicitly expand the application of  
18 the False Claims Ordinance, enact protections for employees and address any ambiguities in the  
19 City's False Claims Ordinance.

20 NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF  
21 HALLANDALE BEACH, FLORIDA:

22  
23 **SECTION 1.** The foregoing "Whereas" clauses are hereby incorporated herein.

24 **SECTION 2.** Chapter 8, Article VIII "False Claims" Sections 8-201 through Section 8-  
25 210, are hereby repealed in their entirety.

26 **SECTION 3.** Article V "False Claims" is created in Chapter 19 "Offenses and  
27 Miscellaneous Provisions" to read as follows:

28  
29 **ARTICLE V. - FALSE CLAIMS**

30 **Sec 19-100 Short Title; purpose**

31 (a) This article shall be known and may be cited as "The City of Hallandale Beach  
32 False Claims Ordinance."

33 (b) The purpose of the False Claims Ordinance is to deter persons from knowingly  
34 causing or assisting in causing the city to pay false claims, and to provide

remedies for obtaining damages and civil relief for the city if a false claim is sought or obtained from the city.

- (c) The provisions of this chapter are to be liberally construed to effectuate its remedial and deterrent purposes and the public interest. The remedies provided in this chapter are not exclusive, and shall be in addition to any other remedies provided for under law. This article does not limit the authority of law enforcement to enforce criminal law in any manner.

**Sec. 19-101. - Definitions.**

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

- (a) *City* means the City of Hallandale Beach.
- (b) *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.
- (c) *Claimant* means any person who brings, submits, files, maintains, or pursues a claim.
- (d) *Knowing or knowingly* means that a person:
- (1) Has actual knowledge of the information;
  - (2) Acts in deliberate ignorance of the truth or falsity of the information;
  - (3) Acts in reckless disregard of the truth or falsity of the information; or
  - (4) Provides incomplete information by omitting pertinent facts in an attempt to deceive.
- (e) *Person* means any natural person, corporation, firm, association, organization, partnership, agency, limited liability company, business, or trust.
- (f) *Trustee* means the person bringing suit under this article.

**Sec. 19-102. - Liability for false claims; penalties.**

(a) The following action(s) shall constitute a false claim and a violation of this article:

- (1) 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 on which the city relies to its financial detriment;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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.

(b) 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 30 days of discovering the error, shall also be found to have submitted a false claim to the city.

(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; and
- (5) Be subject to criminal and civil penalties under section 1-08 of this Code.

- (e) Liability under this section shall be joint and several for any act committed by two or more persons.

**Sec. 19-103. - Civil actions for false claims.**

- (a) All suits under this article shall be filed in the 17th Judicial Circuit in and for Broward County and shall be governed by the Florida Rules of Civil Procedure.
- (b) The city manager or designee may investigate a violation of this article. If the city manager or designee finds that a person has violated or is violating this article, the city manager may recommend to the City Commission a civil action against that person.
- (c) A trustee may bring a civil action for violations of this act and shall be brought in that person's name on behalf of the city, with a certification that all papers in the action are delivered to the city. The city shall not be bound by the trustee's actions.
- (1) When a trustee files an action under this section, the city may intervene or bring an action under this section based on the facts underlying the pending action, and the city shall not be bound by the trustee's actions.
- (2) If the city intervenes in the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by the acts of the trustee in bringing or participating in the action. The trustee shall have the right to continue as a party to the action, subject to the city's right to dismiss or settle the suit notwithstanding the trustee's objections. If the city does not intervene, the trustee has the right to conduct the action on its own, subject always to the city's right to intervene.
- (d) Only the city or a trustee or both may file suit based on the same allegations and intervene in the action of the other. No other person may intervene or bring suit based on same.

**Sec. 19-104. – Exemptions to civil actions.**

- (a) No action shall lie under this article against a member of the city commission or city employee.

(b) In no event may a trustee bring an action under this article based upon allegations or transactions that are the subject of a civil action or an administrative proceeding in which the city is already a party.

(c) A trustee cannot bring an action under this article based upon allegations publicly disclosed in transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, or inspector general report, hearing, audit, or investigation; or from the news media, unless the trustee bringing the action is an original source of the information. For purposes of this subsection, the term "original source" means a person who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the city manager or designee at least 30 days before filing an action under this article based on the information.

(d) No trustee can bring an action under this article if the trustee is, or is acting on behalf of, an employee or former employee of the city, and upon information obtained in the course or scope of city employment.

**Sec. 19-105. - Awards to plaintiffs bringing action.**

(a) If a trustee, not joined by the city under this article prevails, the court shall order the distribution to the trustee of not more than 20 percent of the proceeds recovered under any judgment obtained or out of the proceeds of any settlement with the remainder to be distributed to the city.

(b) If the city joins in an action filed by the trustee, the trustee bringing the action or settling the claim shall receive not more than 15 percent of the proceeds recovered under a judgment rendered or in settlement of a claim under this article with the remainder to be distributed to the city, taking into account the significance of the information and the role of the trustee in bringing the action and in advancing the case, with the remainder to be distributed and paid to the city.

(c) Any payment under this section to the person bringing the action shall be paid only out of the proceeds recovered from the defendant.

- (d) Whether or not the city proceeds with the action, if the court finds that the action was brought by a person who planned, initiated, or furthered the false claim upon which the action was brought, the person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the city to continue the action.

**Section 19-106. -- Expenses; attorney's fees and costs.**

- (a) In an action by the city or trustee who prevail in such action, the trustee and the city shall be awarded its reasonable attorney's fees, expenses, and costs.
- (b) If the city does not proceed with an action under this article and the defendant is the prevailing party, the court shall award the defendant reasonable attorney's fees and costs against the person bringing the action.
- (c) No liability shall be incurred by the city for any expenses, attorney's fees, or other costs incurred by the trustee in bringing or defending an action under this article.

**Sec. 19-107. - 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:

- (a) 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;
- (b) The claimant had no reasonable basis to doubt the truth, veracity, or accuracy of such claim at the time it was submitted;
- (c) Prior to submitting the claim, the claimant diligently investigated the facts underlying such claim and prepared the claim in a reasonable manner given all the relevant information available; and
- (d) When information indicating that any element, statement, or allegation in the claim was false or misleading first became available, such claimant, within five 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.

198       **Sec. 19-108. - Certification of claims; penalties.**

- 199       (a)     Upon the request of the city, the person submitting a claim shall, within 30 days,  
200             including Saturdays, Sundays, and legal holidays, submit a certified claim as  
201             defined by this section. A "certified claim" shall be made under oath by a person  
202             duly authorized by the claimant and shall contain a statement that:
- 203             (1)     The claim is made in good faith;
- 204             (2)     The claim's supporting data are accurate and complete to the best of the  
205             person's knowledge and belief;
- 206             (3)     The amount of the claim accurately reflects the amount that the claimant  
207             believes is due from the city; and
- 208             (4)     The certifying person is duly authorized by the claimant to certify the  
209             claim.
- 210       (b)     Failure to provide the requested certification within the prescribed 30-day period  
211             shall constitute a forfeiture of the entire claim.
- 212       (c)     Any person who certifies a claim later determined by the City Commission to be  
213             false after notice and a public hearing, shall be subject to debarment from city  
214             contracting for a period not to exceed five years.

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216       **Sec. 19-110. - Protection for participating employees.**

217       Any employee who is discharged, demoted, suspended, threatened, or in any other  
218       manner discriminated against in the terms or conditions of employment by his or her  
219       employer because of lawful acts done by the employee in furtherance of an action under  
220       this Article, including investigation for, initiation of, testimony for, or assistance in an  
221       action filed or to be filed under this article, shall have a cause of action under Section  
222       112.3187, Florida Statutes.

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224       **SECTION 3.** Sections 19-91 to 19-99 are reserved for future use.

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226       **SECTION 4. Conflict.** All ordinances or portions of the Code of Ordinances of the City  
227       of Hallandale Beach in conflict with the provisions of this ordinance shall be repealed to the  
228       extent of such conflict.

**SECTION 5. Severability.** Should any provision of this ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be invalid.

**SECTION 6. Codification.** It is the intention of the Mayor and City Commission that the provisions of this ordinance be incorporated into the Code of Ordinances; to effect such intention the words "ordinance" or "section" may be changed to other appropriate words.

**SECTION 7. Effective date.** This Ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED on 1<sup>st</sup> reading on \_\_\_\_\_, 2018.

PASSED AND ADOPTED on 2<sup>nd</sup> reading on \_\_\_\_\_, 2018.

\_\_\_\_\_  
KEITH S. LONDON  
MAYOR

SPONSORED BY: MAYOR KEITH S. LONDON

ATTEST:

\_\_\_\_\_  
JENORGEN GUILLEN  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY  
FORM

\_\_\_\_\_  
JENNIFER MERINO  
CITY ATTORNEY