

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:

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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25 210, are hereby repealed in their entirety.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:

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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

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

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

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

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

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48 (a) *City* means the City of Hallandale Beach.

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50 (b) *Claim* means any invoice, statement, request, demand, lawsuit, or action under  
51 contract or otherwise, for money, property, or services made to any employee,  
52 officer, or agent of the city, or to any contractor, grantee, or other recipient if any  
53 portion of the money, property or services requested or demanded was issued  
54 from, or was provided by, the city.

55 (c) *Claimant* means any person who brings, submits, files, maintains, or pursues a  
56 claim.

57 (d) *Knowing or knowingly* means that a person:

58 (1) Has actual knowledge of the information;

59 (2) Acts in deliberate ignorance of the truth or falsity of the information;

60 (3) Acts in reckless disregard of the truth or falsity of the information; or

61 (4) Provides incomplete information by omitting pertinent facts in an attempt  
62 to deceive.

63 (e) *Person* means any natural person, corporation, firm, association, organization,  
64 partnership, agency, limited liability company, business, or trust.

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66 (f) *Trustee* means the person bringing suit under this article.

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

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

- 70 (1) Any person who knowingly presents or causes to be presented to the city,  
71 or to any officer, employee, agent, or consultant of the city, a false or  
72 fraudulent claim for payment or approval on which the city relies to its  
73 financial detriment;
- 74 (2) Any person who knowingly makes, uses, or causes to be made or used, a  
75 false record or statement to get a false, fraudulent, or inflated claim paid  
76 or approved by the city;
- 77 (3) Any person who conspires to defraud the city by facilitating the payment  
78 of a false, fraudulent, or inflated claim allowed or paid by the city;
- 79 (4) Any person who delivers, with the intent to defraud the city, goods or  
80 services of different quality or quantity than that specified in the applicable  
81 contract or specification;
- 82 (5) Any person who knowingly makes, uses, or causes to be made or used, a  
83 false record or statement to conceal, avoid or decrease an obligation to  
84 pay or transmit money or property to the city.

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86 (b) Any beneficiary of an inadvertent submission of a false claim to the city, who  
87 subsequently discovers the falsity of the claim, and who fails to disclose the  
88 falsity of the claim to the city within 30 days of discovering the error, shall also be  
89 found to have submitted a false claim to the city.

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91 (c) Any person found to have submitted a false claim to the city shall:

- 92 (1) Be liable to the city for an amount equal to three times that part of the  
93 claim which is false, fraudulent, or inflated;
- 94 (2) Immediately, fully, and irrevocably forfeit the entire amount of the claim;
- 95 (3) Be liable to the city for all costs and fees (including, without limitation,  
96 reasonable legal, expert, and consulting fees) incurred by the city to  
97 review, defend, and evaluate the claim; and
- 98 (4) Be subject to debarment from city contracting for a period not to exceed  
99 five years; and
- 100 (5) Be subject to criminal and civil penalties under section 1-08 of this Code.

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

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

105 (a) All suits under this article shall be filed in the 17th Judicial Circuit in and for  
106 Broward County and shall be governed by the Florida Rules of Civil Procedure.

107 (b) The city manager or designee may investigate a violation of this article. If the city  
108 manager or designee finds that a person has violated or is violating this article,  
109 the city manager may recommend to the City Commission a civil action against  
110 that person.

111 (c) A trustee may bring a civil action for violations of this act and shall be brought in  
112 that person's name on behalf of the city, with a certification that all papers in the  
113 action are delivered to the city. The city shall not be bound by the trustee's  
114 actions.

115 (1) When a trustee files an action under this section, the city may intervene  
116 or bring an action under this section based on the facts underlying the  
117 pending action, and the city shall not be bound by the trustee's actions.

118 (2) If the city intervenes in the action, it shall have the primary responsibility  
119 for prosecuting the action, and shall not be bound by the acts of the  
120 trustee in bringing or participating in the action. The trustee shall have the  
121 right to continue as a party to the action, subject to the city's right to  
122 dismiss or settle the suit notwithstanding the trustee's objections. If the  
123 city does not intervene, the trustee has the right to conduct the action on  
124 its own, subject always to the city's right to intervene.

125 (d) Only the city or a trustee or both may file suit based on the same allegations and  
126 intervene in the action of the other. No other person may intervene or bring suit  
127 based on same.

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

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

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

135  
136 (c) A trustee cannot bring an action under this article based upon allegations publicly  
137 disclosed in transactions in a criminal, civil, or administrative hearing; in a  
138 legislative, administrative, or inspector general report, hearing, audit, or  
139 investigation; or from the news media, unless the trustee bringing the action is an  
140 original source of the information. For purposes of this subsection, the term  
141 "original source" means a person who has direct and independent knowledge of  
142 the information on which the allegations are based and has voluntarily provided  
143 the information to the city manager or designee at least 30 days before filing an  
144 action under this article based on the information.

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

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

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

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

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

165 (d) Whether or not the city proceeds with the action, if the court finds that the action  
166 was brought by a person who planned, initiated, or furthered the false claim upon  
167 which the action was brought, the person shall be dismissed from the civil action  
168 and shall not receive any share of the proceeds of the action. Such dismissal  
169 shall not prejudice the right of the city to continue the action.  
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171 **Section 19-106. -- Expenses; attorney's fees and costs.**

- 172 (a) In an action by the city or trustee who prevail in such action, the trustee and the  
173 city shall be awarded its reasonable attorney's fees, expenses, and costs.
- 174 (b) If the city does not proceed with an action under this article and the defendant is  
175 the prevailing party, the court shall award the defendant reasonable attorney's  
176 fees and costs against the person bringing the action.
- 177 (c) No liability shall be incurred by the city for any expenses, attorney's fees, or other  
178 costs incurred by the trustee in bringing or defending an action under this article.  
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180 **Sec. 19-107. - Innocent claimant affirmative defense.**

181 The provisions of this article shall not apply if the claimant can demonstrate by a  
182 preponderance of the evidence each of the following facts:  
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- 184 (a) The claimant submitted or caused to have submitted the claim to or against the  
185 city reasonably believing that such claim was free of any material misstatements,  
186 or exaggerated, inflated, or unsubstantiated assertions or damages;
- 187 (b) The claimant had no reasonable basis to doubt the truth, veracity, or accuracy of  
188 such claim at the time it was submitted;
- 189 (c) Prior to submitting the claim, the claimant diligently investigated the facts  
190 underlying such claim and prepared the claim in a reasonable manner given all  
191 the relevant information available; and
- 192 (d) When information indicating that any element, statement, or allegation in the  
193 claim was false or misleading first became available, such claimant, within five  
194 business days of discovering the falsity of the claim, took immediate steps to  
195 modify, correct, or withdraw such claim and provided the city with immediate  
196 notice thereof.  
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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.

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