

City of Philadelphia



(Bill No. 090467)

AN ORDINANCE

Amending Title 19 of The Philadelphia Code, entitled “Finance, Taxes and Collections,” by adding a new Chapter providing for the recovery of enhanced monetary damages from persons who file false or fraudulent claims with the City, providing a procedure for persons with knowledge of such claims to inform the City and authorizing the City, in certain circumstances, to allow such persons to commence civil actions on behalf of the City and to share in the proceeds awarded, and providing for civil penalties, attorneys’ fees and costs, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 19 of The Philadelphia Code is hereby amended to read as follows:

TITLE 19. FINANCE, TAXES AND COLLECTIONS.

* * *

CHAPTER 19-3600. FALSE CLAIMS.

§ 19-3601. Definitions. The following definitions shall apply to this Chapter.

(1) Claim. Any request or demand, whether under a contract or otherwise, for money or property, or financial assistance (as defined in § 17-1401(16), but regardless of amount), which is made to any employee, officer or agent of the City or to any contractor, grantee or other recipient of money or property, if the City provides any portion of the money or property which is requested or demanded, or will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(2) Contractor. A person who enters into a contact with the City or any owner, officer, director, employee or agent of such person, any subcontractor of such person or any person acting in concert or conspiring with such person, but not including any person who is a city official or employee or was a city official or employee at the time of the alleged conduct.

(3) False Claim. A claim, or information relating to a claim, which is false or fraudulent.

(4) Investigation. An inquiry conducted for the purpose of ascertaining whether any person is or has been engaged in a violation of this Chapter.

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(5) Knowing and knowingly. Acting with actual knowledge of the information, in deliberate ignorance of the truth or falsity of the information, or in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

(6) Proceeds. The treble damages and fines as provided in Section 19-3602, but not attorneys' fees and costs.

§ 19-3602. Prohibited Conduct. Any person who commits any of the following acts shall be liable to the City for three (3) times the amount of damages which the City sustains because of the act of that person; shall have committed a Class III offense and be subject to the fines set forth in Section 1-109(3) of this Code; and shall be liable for attorneys' fees and costs for any civil action brought to recover such damages and penalties:

(1) Knowingly presents or causes to be presented to an officer or employee of the City a false claim for payment or approval by the City;

(2) Knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

(3) Conspires to defraud the City by getting a false claim allowed or paid by the City;

(4) Has possession, custody or control of property or money used or to be used by the City and, intending to defraud the City or willfully to conceal the property, delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

(5) 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;

(6) Knowingly buys or receives, as a pledge of an obligation or debt, public property from an officer or employee of the City knowing that such officer or employee lawfully may not sell or pledge the property; or

(7) 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.

The court may assess less than three (3) times the amount of damages sustained because of the act of such person if the court determines that the person has fully cooperated with any government investigation of the violation.

§ 19-3603. Civil Actions for False Claims.

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(1) Actions by the City Solicitor. If the City Solicitor determines that a person has violated or is violating the provisions of Section 19-3602, he or she may institute a civil action against that person in a court of competent jurisdiction.

(2) Actions by Private Persons.

(a) Any person may submit a proposed civil complaint, alleging violations of this Chapter, to the City Solicitor or to such other officer of the City whom the Mayor designates to investigate such complaints. The proposed civil complaint shall be signed and verified and shall include all material evidence and information possessed by such person in support of the allegations in the complaint. The City Solicitor or the officer designated by the Mayor under this Chapter is authorized to investigate all such complaints and may request any additional information from the person who submitted the proposed civil complaint, in order to investigate the allegations set forth therein.

(b) After the investigation has been completed, the City Solicitor may:

(.1) Bring a civil action, based upon the facts alleged in such complaint, against one or more of the defendants named therein;

(.2) Enter into an agreement with and designate the person who submitted the proposed civil complaint or, if that person is not an attorney, his or her attorney, to file a civil action for the person and the City, in the name of the City, based upon the facts alleged in the complaint, against one or more of the defendants named therein;

(A) An agreement pursuant to this subsection shall not be subject to the provisions of Chapter 17-1400 (relating to Non-Competitively Bid Contracts).

(.3) Decline to commence a civil action and decline to designate the person who submitted the proposed complaint to commence a civil action; or

(.4) Proceed in any other manner the City Solicitor deems appropriate.

(c) Information submitted by a person in support of a complaint, and information gathered as a result of the City Solicitor's or other City officer's investigation of the complaint, shall be confidential and protected from disclosure to the fullest extent permitted under applicable law.

(3) Certain Actions Barred. This Chapter shall not apply to claims, records, or statements made pursuant to federal, state or local tax law nor to any proposed civil complaints:

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(a) Based upon one or more false claims with a cumulative value of less than ten thousand (10,000) dollars;

(b) Based upon allegations or transactions which are the subject of any pending criminal, civil, or administrative action or proceeding in which the City is already a party;

(c) Derived from public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation or upon allegations or transactions disclosed by the news media and likely to be seen by the City officials responsible for addressing false claims, unless the person who submitted the proposed complaint is the primary source of the information;

(d) Based upon information discovered by an employee of the City, state or federal government in the course of his or her employment unless:

(.1) Such employee first reported the information to the City; and

(.2) The City failed to act on the information within six months of its receipt of the information; or

(e) Against the federal government, the Commonwealth of Pennsylvania, the City or any officer or employee of those governmental entities acting within the scope of his or her employment.

Notwithstanding the inapplicability of this Chapter to such cases, the City Solicitor is not precluded from otherwise filing an action in such cases.

(4) Nothing herein shall be construed as authorizing anyone, other than the City Solicitor or a person or attorney designated pursuant to this Chapter, to commence a civil action to represent the City under this Chapter.

(5) Related Actions. Regardless of whether the City Solicitor has commenced a civil action or another party has been designated to do so, the City Solicitor may elect to pursue any alternative action with respect to the presentation of false claims, provided that, if the alternative action is based upon a proposed civil complaint submitted by any person, such person shall be entitled to the same percentage share of any cash proceeds recovered by the City to which that person would have been entitled if the alternative action were a civil action.

(6) Rights of the Parties.

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(a) If the City Solicitor elects to commence a civil action, then the City Solicitor shall have sole authority for prosecuting and settling the action and may move to dismiss or may settle the action, notwithstanding the objections of the person who submitted the proposed civil complaint upon which such civil action is based. The City Solicitor may, in his or her discretion, file the complaint under seal and maintain its confidentiality for a period of time as deemed necessary by the Solicitor and permitted by the court.

(b) If a person who submitted a proposed civil complaint or his or her attorney has been designated to commence a civil action, then the designated person or attorney, as the case may be, may conduct the action in the name of the City. The City Solicitor may require such person conducting the action to file the complaint under seal, as determined by the Solicitor. Such person may seek to impose fines and penalties under this Code, as well as treble damages, attorneys' fees and costs. However, the City Solicitor may move to dismiss the action, notwithstanding the objection of such person, provided such person has had an opportunity to be heard. The City Solicitor has sole authority to settle the action, and may do so notwithstanding the objection of the person who submitted the proposed civil complaint, if after providing such person with an opportunity to be heard, the court approves the settlement.

(c) The court may issue an order restricting the participation of a person designated to commence a civil action under this Chapter, notwithstanding the objections of such person, if the court determines, after providing such person an opportunity to be heard, that such person's unrestricted participation during the course of the litigation would interfere with or unduly delay the prosecution of the case or would be repetitious or irrelevant, or upon a showing by the defendant that such person's unrestricted participation, during the course of the litigation, would be for purposes of harassment or would cause the defendant undue burden.

(d) The court may issue a stay of any civil action brought under this Chapter if the action will interfere with any investigation or prosecution of a criminal matter arising out of the same facts or for any other reason the court deems appropriate.

(7) Under no circumstances shall the City be bound by an act of a person designated to commence a civil action under this Chapter.

(8) Award from Proceeds.

(a) If the City Solicitor has elected to commence a civil action based on a proposed civil complaint, then the person or persons who submitted the complaint collectively shall be entitled to receive at least ten (10) and no more than twenty-five (25) percent of the proceeds recovered by the City in the civil action or in settlement of such action.

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(b) If a designated person or persons commence a civil action, then such person or persons collectively shall be entitled to receive at least fifteen (15) and no more than thirty (30) percent of the proceeds recovered by the City in the civil action or in settlement of such action.

(c) In determining the share of the proceeds to which a person submitting a proposed civil complaint is entitled, the court may consider the following factors:

(.1) The extent to which such person contributed to the prosecution of the action, either in time, effort or finances;

(.2) Any unreasonable delay by such person in submitting the proposed civil complaint;

(.3) The extent to which the allegations involve a significant safety issue;

(.4) Whether the person has been charged with criminal conduct arising from his or her role in the alleged violation of this Chapter, in which case such person shall not receive any share of the proceeds of the action if convicted on the charges; and

(.5) Fundamental fairness and any other factors the court deems appropriate.

(9) Attorneys' Fees and Costs.

(a) In the event the City prevails in a civil action, commenced pursuant to this Chapter, the City Solicitor or the person designated to commence such action may apply to the court for attorneys' fees and costs.

(b) The City shall not be liable for any expenses, attorneys' fees or costs that a person or a person's attorney incurs in submitting a proposed civil complaint or commencing or litigating a civil action pursuant to this Chapter.

§ 19-3604. Retaliatory Action Prohibited.

(1) No employer shall discharge, demote, suspend, threaten, harass or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee in furtherance of an action under this Chapter, including investigation for, initiation of, testimony for, or other assistance in an action filed or to be filed under this Chapter.

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(2) Any employee who is found to have suffered retaliatory action as defined in § 19-3604(1) shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

§ 19-3605. Regulations. The Law Department may promulgate such regulations it deems necessary and appropriate to implement the provisions of this Chapter.

§ 19-3606. Court Rules. Any rules adopted by the court that differ from the procedures set forth in this Chapter shall supersede the procedures set forth herein.

SECTION 2. This Ordinance shall become effective sixty (60) days after it is enacted into law and shall apply to all claims filed by the City Solicitor pursuant to §19-3603(1) on or after that date; or submitted to the City Solicitor pursuant to § 19-3603(2) on or after that date.

Explanation:

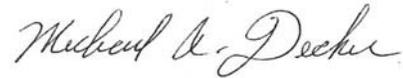
Italics indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on January 28, 2010. The Bill was Signed by the Mayor on February 3, 2010.



Michael A. Decker
Chief Clerk of the City Council