

Introduced by: Council Member Cory Nichols
1st Reading: March 1, 2021
2nd Reading: March 15, 2021

ORDINANCE NO. 2021-8161

AN ORDINANCE OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, AMENDING CITY CODE OF ORDINANCES CHAPTER 16, ARTICLE I, BY CREATING SECTIONS TO SET FORTH THE REQUIREMENTS AND CONDITIONS PRECEDENT FOR EFFECTING SERVICE OF NOTICE OF CLAIMS ON THE CITY IN CONNECTION WITH FLORIDA STATUTE SECTION 768.28, AND ESTABLISHING A FALSE CLAIMS CODE SIMILAR TO THE FLORIDA FALSE CLAIMS ACT PROVIDED TO STATE AGENCIES; PROVIDING FOR LEGISLATIVE FINDINGS, REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Jacksonville Beach (“City”) has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes; and

WHEREAS, Section 768.28, Florida Statutes, permits Florida municipalities to be sued in tort to the extent permitted by that section; and

WHEREAS, Section 768.28, Florida Statutes, requires that as a condition precedent to a claimant proceeding with a legal action against the City brought under that statute, the claimant must provide proper statutory notice to the City; and

WHEREAS, Section 768.28, Florida Statutes, does not prescribe the method of giving this notice to a municipality, and confusion has been caused by the absence of a method because notices are often served upon individuals who are not authorized by law or rule to receive these notices on behalf of the City or Departments; and

WHEREAS, a definite, codified form of accomplishing the given notice would assist all parties by assuring that proper attention is given to the notices and the claims they represent, and provide the City with additional protections for handling claims; and

WHEREAS, the Florida False Claims Act provides a comprehensive separate remedy for the State for fraudulent claims for state funds; and

WHEREAS, the Florida False Claims Act is modeled after the Federal Civil False Claims Act, which has enabled the state and federal governments to make civil recoveries; and

WHEREAS, the Florida False Claims Act does not encompass false or fraudulent claims presented to a municipality; and

WHEREAS, the City has the authority to create its own set of municipal false claims codes that have similar purposes and intent as the Florida False Claims Act does for the State; and

WHEREAS, the City Code of Ordinances should be amended to include protections for the City against false, fraudulent, or inflated claims for payment made by persons, companies and firms; and

WHEREAS, the City Council hereby finds that this Ordinance serves legitimate government purposes, serves to help protect public funds, and is in the best interests of the public health, safety, and welfare of the citizens of the City of Jacksonville Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF JACKSONVILLE BEACH, FLORIDA:

SECTION 1. RECITALS AND LEGISLATIVE FINDINGS. The above recitals and legislative findings are ratified, correct, and made a part of this Ordinance.

SECTION 2. THAT THE CODE OF ORDINANCES, CITY OF JACKSONVILLE BEACH, FLORIDA, IS HEREBY AMENDED BY ADDING TO CHAPTER 16, ARTICLE I, SECTIONS 16-12 THROUGH 16-13, WHICH SAID SECTIONS SHALL READ AS FOLLOWS:

Sec. 16-12. – Service of Notice of Claims made pursuant to Section 768.28, Florida Statutes.

(1) *Intent.* It is the intent of the City Council to specify the manner in which notice under Section 768.28, Florida Statutes, is to be served upon the City.

(2) *Service of notices upon City.* Notices required to be given to the City pursuant to the provisions of Section 768.28, Florida Statutes, shall be served upon the City Attorney and the City Manager by certified mail.

(3) *Contents of notice.* In addition to the information required by Section 768.28(6), Florida Statutes (as amended), a notice served upon the City Attorney and the City Manager pursuant to this section shall contain the following information:

- a. The name and address of the claimant.
- b. The date, time, and place of the injury, accident, or occurrence complained of.
- c. A description of the injury or damage suffered by all claimants.
- d. The names of the agents, officers, or employees of the City, independent agency, organization, or entity involved, if known to the claimant.
- e. A statement, in general terms, of the relief sought from the City.

(4) *Effect of giving notice.* The effect of giving notice to the City Attorney and the City Manager as prescribed in the section shall be to give legally effective notice to the City under Section 768.28, Florida Statutes, if the notice otherwise complies with all of the requisite and conditions precedent information requirements of Section 768.28, Florida Statutes. A notice which fails to comply with the requirements of this section or which is served other than as prescribed by

this section shall not constitute sufficient notice required by Section 768.28, Florida Statutes. Any notice that also does not comply with Section 768.28, Florida Statutes, shall be defective and insufficient.

Sec. 16-13. – False claims.

(1) Purpose and construction. The purpose of this section is to deter persons from knowingly causing, assisting in causing, or attempting to cause the City to pay claims that are false, fraudulent, or inflated, and 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, fraudulent, or inflated claim. The provisions of this section are not exclusive. The remedies provided for in this section shall be in addition to any other remedies provided for in any other law, or available under common law, or otherwise. This section shall be liberally construed and applied to promote the public interest and safekeeping of City resources.

(2) Definitions. As used in this section, the following words and terms shall have the meanings ascribed to them, except when the context clearly indicates a different meaning:

Claim means any invoice, statement, request, demand, lawsuit, claim, cause of action, legal action, or action, under contract or otherwise, for money, property, recovery of damages or injury, or services made to any employee, officer, or agent of the City, or to any claimant, contractor, firm, grantee, or other recipient if any portion of the money, property, or services requested or demanded was issued to, or was provided to the City, or that caused the City to pay any insurance deductible.

Claimant means any person who brings, submits, files, maintains, or pursues a claim, cause of action, lawsuit, or legal action, or whoever submits any invoice, statement, request, or demand to the City.

City means the City of Jacksonville Beach, Florida, or any department, division, council, agency, or board of the City.

Final bid takeoff means the final estimate, tabulation, or worksheet(s) prepared by the contractor in anticipation of the bid submitted, and which shall reflect the final bid price.

Knowing or knowingly means that a person, with respect to information:

- a. Has actual knowledge of the information;
- b. Acts in deliberate ignorance of the truth or falsity of the information; or
- c. Acts in disregard of the truth or falsity of the information.

Overhead per diem means the amount calculated by dividing the total overhead costs set forth in the final bid takeoff by the number of days for substantial completion of the work set forth in the contract.

Person means any natural person, corporation, firm, association, organization, partnership, agency, limited liability company, business, trust, municipality, or other form of government.

(3) Certification of claims.

- a. Upon the request of the City Manager or City Attorney, or their designees, the person who has submitted any type of claim shall, within 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 and shall contain a statement that:
 - i. The claim is made in good faith;
 - ii. The claim’s supporting data are accurate and complete to the best of the person’s knowledge and belief;
 - iii. The amount of the claim accurately reflects the amount that the claimant believes is due or owing from the City; and
 - iv. The certifying person is duly authorized by the claimant to certify the claim.
- b. Failure to provide the requested certification within the prescribed 30-day period shall constitute a forfeiture of the entire claim.

(4) Liability for false claims; penalties.

- a. The following action(s) shall constitute a violation of this section:
 - i. Any person who knowingly presents or causes to be presented to the City, or to any officer, employee, or agent of the City, a false fraudulent, or inflated claim for payment for recovery of loss or damages or for approval;
 - ii. Any person who knowingly makes, uses, or causes to be made or used, a false record, information, or statement to get a false, fraudulent, or inflated claim paid or approved by the City;
 - iii. 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;
 - iv. 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;
 - v. 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; or
 - vi. Any person who knowingly makes, uses, or causes to be made or used, a false record, information, or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City, or to conceal any mitigating factors that would reduce the City’s liability.
- 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:
 - i. Be liable to the City for an amount equal to three times that part of the claim which is false, fraudulent, or inflated;

- ii. Immediately, fully, and irrevocably forfeit the entire amount of the claim;
- iii. 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
- iv. In the case of contractors, vendors, suppliers, and service providers, may 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 may be subject to debarment from City contracting for a period not to exceed five years.
- d. Liability under this section shall be joint and several for any act committed by two or more persons.
- e. Nothing contained herein shall preclude the prosecution of criminal laws against the person submitting the false or fraudulent claim.

(5) *Civil actions for false claims.* The City Manager or City Attorney, and their designees, may investigate a violation under this section. If the City Manager or City Attorney or their designees find that a person has violated or is violating this section, he or she may request approval from the City Council to bring a civil action against the person on behalf of the City.

(6) *Expenses; attorney's fees and costs.*

- a. If the City initiates an action under this section and the City prevails in such action, the City shall be awarded its reasonable attorney's fees, expenses, and costs.
- b. No liability shall be incurred by the City for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending an action under this section, except as otherwise specifically provided by law.

(7) *Exemptions to civil actions.*

- a. In no event may a person bring an action under this section based upon allegations or transactions that are solely the subject of a civil action or an administrative proceeding in which the City is already a party.
- b. No court shall have jurisdiction over an action brought under this section based upon the public disclosure of allegations or 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 action is brought by the City.
- c. No court shall have jurisdiction over an action where the person bringing the action under this section is an employee or former employee of the City and the action is based, in whole or in part, upon information obtained in the course or scope of City employment.
- d. No court shall have jurisdiction over an action where the person bringing the action other than the designated City official obtained the information from an employee or former employee of the City.

(8) Protection for participating employees. Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms or conditions of employment by his or her employer because of lawful acts done by the employee in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall have a cause of action under Section 112.3187, Florida Statutes.

- (9) Burden of proof regarding claims under contracts; presumption of false claim.
- a. Whenever practicable, bid specifications for City contracts shall contain a requirement that the successful bidder maintain, as a condition precedent to submitting a claim against the City, a final bid takeoff. The final bid takeoff shall contain a line item for allocation of overhead costs.
 - b. Upon request from the City, a contractor making a claim against the City for delay or other damages shall submit, within 20 days, a copy of the final bid takeoff, certified pursuant to this subsection. Failure to provide the requested certification shall constitute a forfeiture of the claim for delay or other damages. The certification shall be submitted under oath by a person duly authorized by the claimant and shall contain a statement that:
 - i. The final bid takeoff was prepared contemporaneously with the bid and in anticipation of the bid for the project;
 - ii. The contractor relied on the final bid takeoff to prepare the bid and the original schedule of values; and
 - iii. The final bid takeoff has not been altered in any way.
 - c. Any claim for extended overhead costs that exceeds, on a per diem basis, more than ten percent of the overhead per diem contained in the final bid takeoff shall be presumed to be a false claim, and the contractor shall have the burden of proving that any such claim for extended overhead is not false.

(10) Innocent claimant affirmative defense. The provisions of this section 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 any 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 Manager and City Attorney with immediate notice thereof.

SECTION 4. CONFLICTING ORDINANCES. That all ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

SECTION 5. SEVERABILITY. It is the intention of the City Council that if any section, subsection, clause or provision of this Ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this Ordinance.


SECTION 6. CODIFICATION. The City Council intends that this Ordinance will be made a part of the City of Jacksonville Beach Code of Ordinances.

SECTION 7. EFFECTIVE DATE. This Ordinance shall take effect upon final reading and approval by the City Council for the City of Jacksonville Beach.

AUTHENTICATED THIS 15th DAY OF March, A.D., 2021.

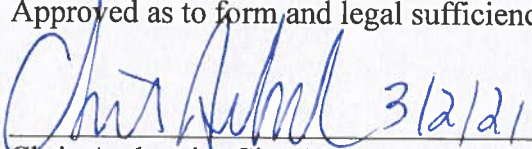


Christine H. Hoffman, Mayor



Laurie Scott, City Clerk

Approved as to form and legal sufficiency:

 3/2/21

Chris Ambrosio, City Attorney