

CITY OF DILLINGHAM, ALASKA

ORDINANCE NO. 2022-06

AN ORDINANCE OF THE DILLINGHAM CITY COUNCIL ADOPTING A FALSE CLAIMS ACT

WHEREAS, the Dillingham Municipal Code contains no general prohibition on defrauding or submitting false claims to the City of Dillingham;

WHEREAS, the City of Dillingham should have a system to more effectively combat and prevent fraud and false claims against it;

BE IT ENACTED BY THE COUNCIL OF THE CITY OF DILLINGHAM:

Section 1. Code Ordinance. This is a code ordinance.

Section 2. Amendment of Title 1 Title 1 of the Dillingham Municipal Code is hereby amended by adoption of a new Chapter 1.24, False Claims, to read as follows:

- 1.24.010 Definitions.
- 1.24.020 Liability for false claims and knowing failure to make required payments.
- 1.24.030 Civil actions.
- 1.24.040 Civil investigative tools.
- 1.24.050 Whistleblower protection.

1.24.010 Definitions.

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

1. *"Claim"*

- a. Means any request or demand, whether under a contract or otherwise, for money or property that:
 - i. Is presented to an officer, employee or agent of the city; or
 - ii. Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the city's behalf or to advance a city program or interest, and if the city;
 - (A) Provides or has provided any portion of the money or property requested or demanded; or

- (B) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded;
- b. Does not include requests or demands for money or property that the city has already paid to an individual as compensation for government employment or as an income subsidy with no restrictions on that individual's use of the money or property.
- 2. "*False claim*" means any claim which is, either in whole or part, false or fraudulent.
- 3. "*Knowing and knowingly*" has the meaning in AS 11.81.900(a) with respect to conduct or to a circumstance, and
 - a. Means that a person, with respect to information:
 - i. Has actual knowledge of the information;
 - ii. Acts in deliberate ignorance of the truth or falsity of the information; or
 - iii. Acts in reckless disregard of the truth or falsity of the information; and
 - b. Requires no proof of specific intent to defraud; provided, however that acts occurring by mistake or as a result of mere negligence are not covered by this chapter.
- 4. "*Obligation*" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.
- 5. "*Material*" means having a natural tendency to influence, or be capable of influencing the payment or receipt of money or property.

1.24.020 Liability for false claims and knowing failure to make required payments.

- A. *False claims and failure to make required payments penalized.* Subject to the provisions of subsection B. of this section, a person shall be liable to the city for a civil penalty of not less than \$2,000.00 and not more than \$10,000.00, plus three times the amount of all damages, including consequential damages, which the city sustains because of the act(s) of that person who:
 - 1. Knowingly presents, causes to be presented, maintains, or causes to maintain, a false or fraudulent claim for payment or approval;
 - 2. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
 - 3. Has possession, custody, or control of property or money used, or to be used, by the city and knowingly delivers, or causes to be delivered, less than all of that money or property;
 - 4. 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;

5. Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the city knowing that the officer or employee violates a provision of law when selling or pledging such property; for purposes of this subsection A.5., an "obligation" can be an obligation of any person and does not have to be an obligation of the person who knowingly makes, uses, or causes to be made or used, a false record or statement material to such obligation to pay or transmit money or property to the city;
 6. Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the city; or
 7. Knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the city, or conspires to do the same; for purposes of this subsection A.7., an "obligation" can be an obligation of any person and does not have to be an obligation of the person who knowingly conceals or who knowingly and improperly avoids or decreases such obligation to pay or transmit money or property to the city; or
 8. Conspires to commit a violation of this subsection A.;
- B. *Reduction in damages for cooperation.* A court may assess not more than two times the amount of damages sustained because of the act of the person described in subsection A., if the court finds that:
1. The person committing the violation of this section had furnished all information known to such person about the violation, to those officials responsible for investigating false claims violations on behalf of the city, within 30 days after the date on which such person first obtained the information;
 2. Such person fully cooperated with any government investigation of such violation; and
 3. At the time such person furnished information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, or the person did not have actual knowledge of the existence of an investigation into such violation.
- C. *Application of the damage multiplier.* The city's damages shall be trebled or doubled pursuant to this section before any subtractions are made for compensatory payments received by the city from any source, including but not limited to the defendant, or before any subtractions are otherwise made because of any offset or credit received by the city from any source, including but not limited to the defendant.
- D. *Exclusion of tax claims under \$10,000.00 and property tax claims.*
1. This section shall apply to claims, records, or statements made under Title 4 of this code or failure to remit taxes, only if the damages pleaded in such action exceed \$10,000.00.
 2. This section shall not apply to the failure to remit property taxes.

1.24.030 Civil actions.

The city attorney shall have the authority to investigate violations of section 1.24.020. If the city attorney believes that a person has violated or is violating such section, then the city attorney may bring a civil action against such person and may join such action or claims with other civil actions or claims. No action or claim may be filed pursuant to this section against the federal government, the state, or any officer or employee thereof acting in official capacity.

1.24.040 Civil investigative tools.

A. Whenever the city attorney has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a possible violation of section 1.24.020, the city attorney is authorized to investigate such violations by taking proof, making a determination of the relevant facts, and issuing civil investigative demands requiring such person:

1. To produce such documentary material for inspection and copying,
2. To answer in writing written interrogatories with respect to such documentary material or information,
3. To give oral testimony concerning such documentary material or information, or
4. To furnish any combination of such material, answers, or testimony.

Such authorization shall not abate or terminate by reason of any action or proceeding brought under this chapter by the city attorney.

B. *Protected material or information.* A civil investigative demand issued under subsection A. may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

1. The standards applicable to subpoenas or subpoenas duces tecum issued by a court of the State of Alaska to aid in a grand jury investigation; or
2. The standards applicable to discovery requests under the Alaska Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

C. *Failure to comply.* If a person directed to respond to a civil investigative demand under this section as part of an inquiry related to a violation of this chapter fails to obey the command of the civil investigative demand without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce a book or paper or data when ordered so to do by the officer conducting such inquiry, or if a person fails to perform any act required to be performed, the city attorney may institute civil contempt proceedings, move a court to compel compliance, or take any other action authorized by law.

1.24.050 Whistleblower protection.

- A. Any current or former employee, contractor, or agent of any private or public employer who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment, or otherwise harmed or penalized by an employer, or a prospective employer, because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action brought under this chapter or other efforts to stop one or more violations of this chapter, shall be entitled to all relief necessary to make the employee, contractor or agent whole. Such relief shall include but not be limited to:
1. An injunction to restrain continued discrimination;
 2. Hiring, contracting or reinstatement to the position such person would have had but for the discrimination or to an equivalent position;
 3. Reinstatement of full fringe benefits and seniority rights;
 4. Payment of two times back pay, plus interest; and
 5. Compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees.
- B. For purposes of this section, a "lawful act" shall include, but not be limited to, obtaining or transmitting to the city or a government agency documents, data, correspondence, electronic mail, or any other information, even though such act may violate a contract, employment term, or duty owed to the employer or contractor, so long as the possession and transmission of such documents are for the sole purpose of furthering efforts to stop one or more violations of this chapter. Nothing in this title shall be interpreted to prevent any law enforcement authority from bringing a civil or criminal action against any person for violating any provision of law.
- C. An employee, contractor or agent described in subsection A. may bring an action in the appropriate court for the relief provided in this section.

Section 3. Effective Date. This ordinance shall be effective upon adoption.

PASSED and ADOPTED by a duly constituted quorum of the Dillingham City Council on September 8, 2022.

Alice Ruby, Mayor
City of Dillingham

ATTEST:

Lori Goodell, City Clerk