

COUNTY OF BUCKS
Commonwealth of Pennsylvania

FALSE CLAIMS ORDINANCE

ORDINANCE NO. 163

Enacted May 6, 2020

AN ORDINANCE OF THE COUNTY OF BUCKS, COMMONWEALTH OF PENNSYLVANIA, KNOWN AS THE "BUCKS COUNTY FALSE CLAIMS ORDINANCE". THE PURPOSE OF THE BUCKS COUNTY FALSE CLAIMS ORDINANCE IS TO DETER PERSONS FROM KNOWINGLY CAUSING OR ASSISTING IN CAUSING THE COUNTY TO PAY CLAIMS THAT ARE FALSE, FRAUDULENT OR INFLATED AND TO PROVIDE REMEDIES FOR OBTAINING DAMAGES AND CIVIL PENALTIES FOR THE COUNTY WHEN MONEY IS SOUGHT OR OBTAINED FROM THE COUNTY BY REASON OF A FALSE CLAIM.

WHEREAS, Bucks County ("County" or "the County") is empowered to enact certain laws needed to protect its proprietary and financial interests;

WHEREAS, the County has a duty to prevent taxpayer funds from being misappropriated to pay of false or fraudulent claims; and

WHEREAS, the County seeks to encourage private citizens to report false and fraudulent conduct impacting the County and its residents.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the County, the following requirements are adopted as specified herein:

SECTION 1

§ 1. Definitions.

For the purposes of this Ordinance, the following words shall have the definitions described herein, unless the context clearly indicates that such meaning was not intended:

Claim

Any request or demand, whether under a contract or otherwise, for money or property, or financial assistance which is made to any employee, officer or agent of the County or to any contractor, grantee or other recipient of money or property, if the County 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.

Contractor

A person who enters into a contract with the County 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 County official or employee or was a County official or employee at the time of the alleged conduct.

County

The County of Bucks or any agencies or instrumentalities thereof.

False Claim

A claim (whether certified or not), or information relating to a claim, which is false or fraudulent.

Investigation

An inquiry conducted for the purpose of ascertaining whether any person is or has been engaged in a violation of this Ordinance.

Knowing

Acting with actual knowledge of the information, in deliberate ignorance or willful blindness of the truth or falsity of the information, or in reckless disregard of the truth or falsity of the information. For the purposes of this Ordinance, no proof of specific intent to defraud shall be required to establish a violation.

Person

A natural person, corporation, partnership, limited liability company, business trust, other association, government entity (other than the County), estate, trust, or foundation.

Proceeds

The treble damages as provided in section §3(A) (or damages as provided in section §3(B)), not including attorneys' fees and costs.

§2. Certification of claims.

- A. Upon the request of the County, the person submitting a claim shall, within 30 days, submit a certified claim as defined by this section, in a format designated by the County. A "certified claim" shall be made under oath by a person duly authorized by the claimant, and shall contain a statement that:
- (1) The claim is made in good faith;
 - (2) The claim's supporting data is accurate and complete to the best of the person's knowledge and belief;
 - (3) The amount of the claim accurately reflects the amount that the claimant believes is due from the County; and
 - (4) 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 grounds for a forfeiture of the entire claim.

§3. Prohibited conduct.

- A. Any person who commits any of the following prohibited acts shall be liable to the County for three times the amount of damages which the County sustains because of such action, and shall be liable for reasonable attorneys' fees and costs for any civil action brought to recover such damages:
- (1) Knowingly presents or causes to be presented a false 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) Conspires to commit a violation of Subsection A(1), (2), (4), (5),(6) or (7);
 - (4) Has possession, custody or control of property or money used or to be used by the County and, intending to defraud the County 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 County and, intending to defraud the County, 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 County 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 County.

B. The court may assess less than three times the amount of damages sustained by the County because of the act of any individual if the court determines that such individual has fully cooperated with any government investigation of the violation, but in no circumstance may the court assess less than the full amount of the damages sustained by the County.

§ 4. Civil actions for false claims.

A. Actions by the County Solicitor. If the County Solicitor determines that a person has violated or is violating the provisions of § 3, he or she may institute a civil action against that person in a court of competent jurisdiction.

B. Actions by private persons.

(1) Any person may submit a proposed civil complaint, alleging violations of § 3, to the County Solicitor or to such other officer of the County whom the County Solicitor 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 County Solicitor or the designated officer under this Ordinance 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.

(2) The County Solicitor may elect to intervene and proceed with the action within 60 days after receiving both the complaint and the material evidence and information. The County Solicitor may extend the time for the investigation by an additional 60 days upon provision of written notice to the person who submitted the complaint.

(3) Before the expiration of the 60-day period or any extension thereof, the County Solicitor shall:

(a) Bring a civil action, based upon the facts alleged in such complaint, against one or more of the defendants named therein, in which case the action shall be conducted by the County Solicitor; or

(b) Notify the person that submitted the complaint that the County declines to take over the action, in which case the person submitting the case shall have the right to file and conduct the action

(4) If the County Solicitor elects not to proceed with the action and so requests, he or she shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the County's expense. When the action is initiated by a person, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the County to intervene at a later date upon a showing of good cause.

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

C. Certain actions barred.

(1) A civil complaint alleging violations of this Ordinance shall not be sustained:

(a) On the basis of claims, records, or statements made pursuant to federal, state or local tax law;

(b) On the basis of false claims with a cumulative value of less than \$10,000; or

(c) Against a claimant who demonstrates by a preponderance of the evidence each of the following facts:

(i) The claimant submitted or caused to have submitted the claim to or against the County reasonably believing that such claim was free of any material misstatements, or any exaggerated, inflated, or unsubstantiated assertions or damages;

(ii) The claimant had no reasonable basis to doubt the truth, veracity, or accuracy of such claim at the time it was submitted;

(iii) 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

(iv) 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 County with immediate notice thereof.

(2) Unless brought by or with the consent of the County Solicitor, a civil complaint under this Ordinance may not be brought:

(a) On the basis of publicly disclosed information

For the purposes of this subsection, a complaint is based on “publicly disclosed information” if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:

[1] In a criminal, civil, or administrative hearing, in which the County or any agent thereof is a party; or

[2] In a legislative or administrative report, hearing, audit, or investigation; or

[3] By the news media;

(b) On the basis of information discovered by an employee, appointee, or other official of the County, state or federal government in the course of his or her employment, appointment, or duties unless:

(i) Such employee, appointee or official first reported the information to the County; and

(ii) The County failed to act on the information within six months of its receipt of the information; or

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

D. Nothing herein shall be construed as authorizing anyone, other than the County Solicitor or a person or attorney designated pursuant to this Ordinance, to commence a civil action to represent the County under this Ordinance.

E. Related actions. Regardless of whether the County Solicitor has commenced a civil action or another party has been designated to do so, the County 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 County to which that person would have been entitled if the alternative action were a civil action.

F. Rights of the parties.

(1) If the County Solicitor elects to commence a civil action, then the County 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 County 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.

(2) If a person who submitted a proposed civil complaint or his or her attorney has been designated to commence a civil action pursuant to the terms of this Ordinance, then the person or attorney, as the case may be, may conduct the action in the name of the County. The County Solicitor may require such person conducting the action to file the complaint under seal, as determined by the Solicitor. Such person may seek treble damages, attorneys' fees and costs. However, the County Solicitor shall have sole authority to move to dismiss the action, notwithstanding the objection of such person, provided such person has had an opportunity to be heard by the court. The County 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.

(3) The court may issue an order restricting the participation of a person conducting a civil action under this Ordinance, 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.

(4) The court may issue a stay of any civil action brought under this Ordinance 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.

G. Award from proceeds.

(1) If the County 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 10% and no more than 25% of the proceeds recovered by the County in the civil action or in settlement of such action.

(2) If a person or persons commence a civil action, then such person or persons collectively shall be entitled to receive at least 15% and no more than 30% of the proceeds recovered by the County in the civil action or in settlement of such action.

(3) 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:

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

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

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

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

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

H. Attorneys' fees and costs.

(1) In the event that a plaintiff prevails in a civil action commenced pursuant to § 4(A) or (B) of this Ordinance, the County Solicitor or any person authorized to commence such action shall receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) The County shall not be liable for any expenses, attorneys' fees or costs incurred by any person in bringing or defending an action under this Ordinance except as otherwise specifically provided by law.

§ 5. Retaliatory action prohibited.

A. No person 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 Ordinance, including investigation for, initiation of, testimony for, or other assistance in an action filed or to be filed under this Ordinance.

B. Any employee who is found to have suffered retaliatory action as defined in this section 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, two times the amount of 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.

C. Nothing herein shall be construed as restricting the ability of the County to take any necessary, appropriate or otherwise lawful action with respect to any of employee, appointee, or other official.

§ 6. Court rules.

Any rules adopted by the court that differ from the procedures set forth in this Ordinance shall supersede the procedures set forth herein.

§ 7. Burden of proof.

In any action brought pursuant to the terms of this Ordinance, the County or the person acting on behalf of the County hereunder shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

SECTION 2

Any and all other ordinances or parts of ordinances in violation or in conflict with the terms, conditions and provisions of this ordinance are hereby repealed to the extent of such irreconcilable conflict.

SECTION 3

The terms, conditions and provisions of this Ordinance are hereby declared to be severable, and, should any portion, part or provision of this ordinance be found by a court of competent jurisdiction to be invalid, enforceable or unconstitutional, the Board of Commissioners hereby

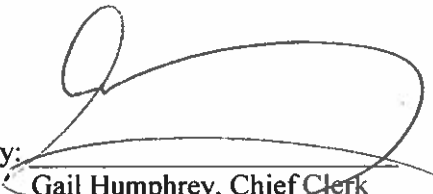
declares its intent that the ordinance shall have been enacted without regard to the invalid, enforceable or unconstitutional portion, part or provision of this ordinance.


SECTION 4


This ordinance shall become effective immediately upon enactment.

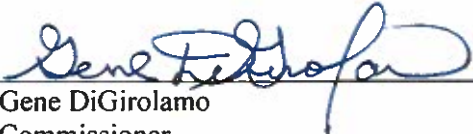
ATTEST:

COUNTY OF BUCKS, PENNSYLVANIA

By: 
Gail Humphrey, Chief Clerk
5/15/2020

By: 
Diane M. Ellis-Marseglia, LCSW
Commissioner, Chair

By: 
Robert J. Harvie, Jr.
Commissioner, Vice Chair

By: 
Gene DiGirolamo
Commissioner