



To: Walter Foeman, Billy Urquia

From: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in blue ink, appearing to be "CL", is written over the "From:" line.

RE: Legal Opinion Regarding Section 39-5 - Scrivener's Error

Date: May 11, 2016

The City Attorney is authorized under section 2-201(e)(9) of the City Code to make corrections to the Code to address scrivener's errors. As discussed in the attached memo, and based on the attached transcript of the Commission proceedings, section 39-5 of the City Code must be corrected to add a subsection (e) that states as follows:

(e) In addition to the above stated penalties, the City Commission may revoke any approvals granted in reliance on any false claim or presentation made by an applicant.

Please inform the Municipal Code Corporation so it can be corrected online. Also, please prepare a corrected ordinance for execution.

CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE

M E M O R A N D U M

TO: Craig Leen, City Attorney
Miriam Ramos, Deputy City Attorney

FROM: Yaneris Figueroa, Assistant City Attorney

RE: Scrivener Error- City Code Chapter 39 "False Claims and Presentation Ordinance."

DATE: May 9, 2016

Craig,

In reviewing City Code Chapter 39, "False Claims and Presentation Ordinance," it appears there was an omission in codification with respect to Section 39-5. This omission should be corrected pursuant to your authority under City Code Section 2-201(e)(9).

Chapter 39 addresses false claims and presentations made to City Staff and/or the City Commission. Section 39-5 establishes the penalties for making said false claims or presentations. In pertinent part, Section 39-5 states as follows:

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

- (1) Be liable to the city for an amount equal to three times that part of the claim which is false, fraudulent, or inflated;
- (2) Immediately, fully, and irrevocably forfeit the entire amount of the claim;
- (3) 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
- (4) 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 shall be subject to debarment from city contracting for a period not to exceed five years.

The City Commission approved this item, on first reading, on October 27, 2015. At the hearing, the City Commission approved the addition of language that would allow the City Commission to revoke any approvals that were granted based on false claims and/or presentations made the applicant. Indeed, the transcript of the hearing supports this, as you indicated to the City Commission that "[a]nother provision we'd like to add to this is that, the City without going to court can revoke the approval." You further clarified this point to the Mayor and stated "you are having a hearing on a conditional use review and you are considering

a condition of approval...let's say they tell you [something], let's say it turns out to be false. This would allow you to revoke the approval." The City Commission then approved the item in a 5-0 vote. In discussing the item on second reading, the City Commission did not provide any additional discussion and approved the item in a 5-0 vote.

As you can see from the above penalties, the revocation of any approvals granted based on the false claim or presentation was unintentionally omitted. Accordingly, Section 39-5 should be corrected to include the following provision: "(e) In addition to the above stated penalties, the City Commission may revoke any approvals granted in reliance on any false claim or presentation made by an applicant." This omission should be corrected pursuant to your authority under City Code Section 2-201(e)(9).

**City of Coral Gables City Commission Meeting
Agenda Item E-1
October 27, 2015
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

**Mayor Jim Cason
Commissioner Pat Keon
Commissioner Vince Lago
Vice Mayor Frank Quesada
Commissioner Jeannett Slesnick**

City Staff

**City Manager, Cathy Swanson-Rivenbark
City Attorney, Craig E. Leen
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia**

Public Speaker(s)

Agenda Item E-1 [Start: 11:10:05 a.m.]

An Ordinance of the City of Coral Gables, Florida, creating a False Claims and Presentations Ordinance to prohibit false or incomplete presentations to or false or fraudulent claims against the City of Coral Gables, providing for enforcement; providing for severability, repealer, codification and an effective date.

Mayor Cason: Let's go to E-1.

City Attorney Leen: Thank you Mr. Mayor. Item E-1 is a public hearing item; it's an Ordinance on First Reading. It's An Ordinance of the City of Coral Gables, Florida, creating a False Claims and Presentations Ordinance to prohibit false or incomplete presentations to or false or fraudulent claims against the City of Coral Gables, providing for enforcement; providing for severability, repealer, codification and an effective date. It's an ordinance that was sponsored by the City Attorney's Office, so I'll just briefly introduce it to you. This ordinance is based on a

county ordinance of a similar name, a false claims and presentation ordinance. What this does, I'm going to talk about it in three parts. First, when someone speaks to City staff or most importantly to the City Commission in seeking an approval or presents a claim to us through our risk manager or through the City Attorney's Office, often this is not done under oath. As you know, if a statement is made under oath, it's under penalties of perjury and you can generally assume that someone is telling the truth. That doesn't always mean they are telling the truth, but they can be penalized if they are not and they state an oath to tell the truth. What this Code does is it puts everyone on notice that they are always required to tell the truth when they present matters to the City of Coral Gables, and if they do not tell the truth, commit a misrepresentation or an admission and the City relies on that to its detriment, the City will be able to take action to fix that, and the City would fix it in two different ways. First, the City can, if it's a claim that's made to the City, we can ask the person to certify the claim and that means they basically have to verify its stated under oath. If they fail to do that they lose the claim after 30 days, the claim is forfeit. So that's one, so it makes people tell the truth about claims. Two, if there is an omission that's made and they learn of the omission, they have 30 days to fix the omission, and if they don't they are held liable for the false claims ordinance. If they commit the misrepresentation or omission and this causes harm to the City, there are two types of remedies. First, the City can sue for treble damages, actually there are three remedies. The City can sue for treble damages, what that means is, let's say someone comes here and tells the City that something happened and they have a claim and let's say its worth \$70,000 and the City says we recognize your claim and they direct the awarding of a settlement or it could be the City Attorney or the City Manager direct the awarding of a settlement of that amount and turned out to be false, and we find that out, we can then sue the individual for three times the amount, plus our attorney's fees and cost which would be \$210,000, and this is a recognized form of cause of action. When I was speaking to the Vice Mayor, he had mentioned that there is the Federal Fraudulent Claims Act, there is obviously a county one which this is based on, it's a little more narrow in some ways, but it's based on it, and in some ways its broader and I'll talk about that in a second. The second thing that we can do and this was raised by the Vice Mayor in our discussion and I'm adding it to the item for second reading, if someone comes before the Commission and presents a request for development approval, whether as-of-right through the Board of Architects like you saw today, or whether it's

a conditional use approval where they are requesting your approval as a Commission, and they tell you something that is false. Another provision we'd like to add to this is that, the City without going to court can revoke the approval, if the Commission in a hearing makes a finding after hearing evidence from both sides that there was something false that was stated that was material to the decision. So that will always give you that ability to trust people, I know you trust people, but you also have to be skeptical because sometimes there is a difference of opinion when people come before you and if you decide to say, you know we are going to accept your testimony and it turns out not to be true, it does give the City a remedy to fix what happened.

Mayor Cason: And I think we've had, I can recall two cases of that in the last year; and there is another possibility too and I think we discussed it, I don't know if you had been able to research it, but we gave maybe four years ago a second Homestead Exemption to people that claimed to have \$26,000 or more income, less income, own the house and then lived in it for "X" number of years and its administered by the Property Appraiser Board but we end up losing the revenue and I think probably just statements, maybe not verified, so there could be some very specific cases where money is at stake for the City.

City Attorney Leen: Exactly. Let's say for example there is – you are having a hearing on a conditional use review and you are considering a condition of approval. Let's say you want to do something related to the setback or there is some protection you need, like you want them to fix a curb or you want them to do something and let's say they tell you we've already done it and that's false, let's say it turns out to be false. This would allow you to revoke the approval; it would also allow you to, instead fix it as the City and then sue them for treble damages for whatever the cost would be. So this is a useful ordinance and I always thought it was interesting that we didn't have one because the county did and they do use it occasionally and it does protect against something important which is the City recognizes the First Amendment and the right to petition the Commission, but we expect that it be done truthfully.

Mayor Cason: This is a public hearing; do we have any speaker cards Mr. Clerk?

City Clerk Foeman: No Mr. Mayor.]

Mayor Cason: So we'll close the public hearing. Hopefully we'll never have to use this, but it's another tool, another arrow...in case we have to.

City Attorney Leen: Yes Mr. Mayor.

Mayor Cason: Any discussion? Motion?

Commissioner Lago: I'll make a motion.

Mayor Cason: Commissioner Lago makes the motion, the Vice Mayor seconds. City Clerk.

Commissioner Keon: Yes

Commissioner Lago: Yes

Vice Mayor Quesada: Yes

Commissioner Slesnick: Yes

Mayor Cason: Yes

(Vote: 5-0)

[End: 11:16:06 a.m.]

From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Subject: FW: Section 39-5 - Scrivener's Error
Date: Wednesday, May 11, 2016 10:12:27 AM
Attachments: [Section 39-5 - Scrivener's Error.pdf](#)
[Commission Transcript - Section 39-5.pdf](#)
[image003.png](#)
[image001.png](#)

Please publish with attachments.

Craig E. Leen, City Attorney

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Celebrating 90 years of a dream realized.

From: Leen, Craig
Sent: Wednesday, May 11, 2016 10:12 AM
To: Foeman, Walter; Urquia, Billy
Cc: Ramos, Miriam; Figueroa, Yaneris
Subject: Section 39-5 - Scrivener's Error

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