Chicago, Illinois, False Claims Act

As amended Coun. J. 11-8-12, p. 38867.

Municipal Code Sect. 1-22-010 et seq.

1-22-010 Definitions.

As used in this chapter:

"Claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made by a city contractor, grantee, or other recipient if the city is the source of any portion of the money or property which is requested or demanded, or if the city will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"Contract" means any agreement or transaction pursuant to which a person (i) receives or may be entitled to receive city funds or other property, including grant funds, in consideration for services, work or goods provided or rendered, including contracts for legal or other professional services, (ii) purchases the city's real or personal property or is granted the right to use it by virtue of a lease, license or otherwise, or (iii) collects monies (other than taxes) on behalf of the city.

"City contractor" means a person who enters into a contract or who has taken any action to obtain a contract, or any owner, officer, director, employee or agent of such a person, or any subcontractor, or any person acting in concert or conspiring with such person, but shall not include any person who is a city official or employee or was a city official or employee at the time of the alleged conduct.

"Investigation" means any inquiry conducted by any investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this chapter.

"Knowing" and "knowingly" mean that a person, with respect to information:

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information, regardless of whether there is specific proof of intent to defraud.

1-22-020 False Claims.

Any person who:

(1) knowingly presents, or causes to be presented, to an official or employee of the city 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 to get a false or fraudulent claim paid or approved by the city;

(3) conspires to defraud the city by getting a false or fraudulent claim allowed or paid;

(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 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) 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 complete knowledge 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 who 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, is liable to the city for a civil penalty of not less than $5,000.00 and not more than $10,000.00, plus three times the amount of damages which the city sustains because of the act of that person. A person violating this section shall also be liable to the city for the attorneys' fees and costs of a civil action brought to recover any such penalty or damages.

1-22-030 Civil actions for false claims.

(a) The corporation counsel may bring a civil action under this section against any person who has violated or is violating Section 1-22-020.

(b) *Actions by private persons.*

(1) A person may bring a civil action against a city contractor for a violation of Section 1-22-020 for the person and for the city. The action shall be brought in the name of the city. The action may be dismissed only if the court and the corporation counsel give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the city. In all such actions, service upon the city shall be made by leaving a copy with the city clerk. The compliant shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The city may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The city may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the city shall:

(A) proceed with the action, in which case the action shall be conducted by the city; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection (b), no person other than the city may intervene or bring a related action based on the facts underlying the pending action.

(c) *Rights of the parties to qui tam actions.*

(1) If the city proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2) (A) The city may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the city of the filing of the motion to dismiss and the court has provided the person with an opportunity for a hearing on the motion.

(B) The city may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the city that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the city's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross- examination of the witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the city elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the city so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all discovery and deposition transcripts at the city's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the city to intervene at a later date upon a showing of good cause.

(4) Whether or not the city proceeds with the action, upon a showing by the city that certain actions of discovery by the person initiating the action would interfere with the city's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the city has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceeding.

(5) Notwithstanding any other provision in subsection (b), the city may elect to pursue its claim through any alternate remedy available to the city, including an administrative proceeding in the department of administrative hearings. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) *Award to qui tam plaintiff.*

(1) If the city proceeds with an action brought by a person under this section, such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or inspector general's report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(2) If the city does not proceed with an action under this section and the action is successfully brought or the claim is settled by another person, that person shall, subject to the exception set forth in this paragraph, receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds.

(3) Any person entitled to an award under paragraphs (1) and (2) of this subsection (d) shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. The city shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred by the corporation counsel, including reasonable attorney's fees and costs. All such expenses, fees and costs awarded pursuant to this subsection (d) shall be awarded against the defendant.

(4) Whether or not the city proceeds with the action, if the court finds that the action was brought by a person who planned, initiated or participated in the violation of Section 1-22-020 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of Section 1-22-020, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the city to continue the action.

(5) If the city does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) In no event may a person bring an action under subsection (b) which (i) is based upon allegations or transactions which are the subject of a civil suit or an administrative proceeding in which the city is already a party or (ii) concerns the application, interpretation or enforcement of any tax ordinance, as that term is defined in Section3-4-020 of this Code.

(f) No court shall have jurisdiction over an action 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's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the corporation counsel or the person bringing the action is an original source of the information. For purposes of this subsection (f), “original source” means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the city before filing an action under this section which is based on the information.

(g) The city is not liable for expenses, including attorney's fees, which a person incurs in bringing an action under this section.

1-22-040 False claims procedure.

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under Section 1-22-030 may be served at any place in the state.

(b) A civil action under Section 1-22-030 may not be brought:

(1) more than six years after the date on which the violation of Section 1-22-020 is committed; or

(2) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the city charged with responsibility to

act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under Section 1-22-030, the city shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a final judgement rendered in favor of the city in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall stop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of Section 1-22-030.

1-22-050 Subpoenas.

(a) *In general.*

(1) *Issuance and service.* Whenever the corporation counsel has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to an investigation, the corporation counsel may, before commencing a civil proceeding under this chapter, issue in writing and cause to be served upon such person, a subpoena requiring such person:

(A) to produce such documentary material for inspection and copying,

(B) to answer, in writing, written interrogatories with respect to such documentary material or information,

(C) to give oral testimony concerning such documentary material or information, or

(D) to furnish any combination of such material, answers, or testimony. Whenever a subpoena is an express demand for any product of discovery, the corporation counsel shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

(2) *Contents and deadlines.* Each subpoena issued under paragraph (1):

(A) Shall state the nature of the conduct constituting an alleged violation that is under investigation and the applicable provision of law alleged to be violated.

(B) Shall identify the individual causing the subpoena to be served and to whom communications regarding the subpoena should be directed.

(C) Shall state the date, place, and time at which the person is required to appear, produce written answers to interrogatories, produce documentary material or give oral testimony. The date shall not be less than ten days from the date of service of the subpoena. Compliance with the subpoena shall be at the office of the corporation counsel.

(D) If the subpoena is for documentary material or interrogatories, shall describe the documents or information requested with specificity.

(E) Shall notify the person of the right to be assisted by counsel.

(F) Shall advise that the person has 20 days from the date of service or up until the return date specified in the demand, whichever date is earlier, to move, modify, or set aside the subpoena pursuant to subparagraph (j)(2)(A) of this section.

(b) *Protected material or information.*

(1) *In general.* A subpoena 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:

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the code of civil procedure, to the extent that the application of such standards to any such subpoena is appropriate and consistent with the provisions and purposes of this section.

(2) *Effect on other orders, rules and laws.* Any such subpoena which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such subpoena does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) *Service in general.* Any subpoena issued under subsection (a) may be served by any person so authorized by the corporation counsel or by any person authorized to serve process on individuals within Illinois, through any method prescribed in the code of civil procedure or as otherwise set forth in this chapter.

(d) *Service upon legal entities and natural persons.*

(1) *Legal entities.* Service of any subpoena issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by:

(A) delivering an executed copy of such subpoena or petition to any partner, executive officer, managing agent, general agent, or registered agent of the partnership, corporation, association or entity;

(B) delivering an executed copy of such subpoena or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity as its principal office or place of business.

(2) *Natural person.* Service of any such subpoena or petition may be made upon any natural person by:

(A) delivering an executed copy of such subpoena or petition to the person; or

(B) depositing an executed copy of such subpoena or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) *Proof of service.* A verified return by the individual serving any subpoena issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(f) *Documentary material.*

(1) *Sworn certificates.* The production of documentary material in response to a subpoena served under this section shall be made under a sworn certificate, in such form as the subpoena designates, by:

(A) in the case of a natural person, the person to whom the subpoena is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the subpoena is directed has been produced and made available to the corporation counsel.

(2) *Production of materials.* Any person upon whom any subpoena for the production of documentary material has been served under this section shall make such material available for inspection and copying to the corporation counsel at the place designated in the subpoena, or at such other place as the corporation counsel and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such subpoena, or on such later date as the corporation counsel may prescribe in writing. Such person may, upon written agreement between the person and the corporation counsel, substitute copies for originals of all or any part of such material.

(g) *Interrogatories.* Each interrogatory in a subpoena served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the subpoena designates by:

(1) in the case of a natural person, the person to whom the subpoena is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the subpoena and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) *Oral examinations.*

(1) *Procedures.* The examination of any person pursuant to a subpoena for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of this state or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a certified copy of the transcript of the testimony in accordance with the instructions of the corporation counsel. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the code of civil procedure.

(2) *Persons present.* The investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the city, any person who may be agreed upon by the attorney for the city and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) *Where testimony taken.* The oral testimony of any person taken pursuant to a subpoena served under this section shall be taken in the county within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the corporation counsel and such person.

(4) *Transcript of testimony.* When the testimony is fully transcribed, the corporation counsel or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to review and correct the transcript, in accordance with the rules applicable to deposition witnesses in civil cases. Upon payment of reasonable charges, the corporation counsel shall furnish a copy of the transcript to the witness, except that the corporation counsel may, for good cause, limit the witness to inspection of the official transcript of the witness' testimony.

(5) *Conduct of oral testimony.*

(A) Any person compelled to appear for oral testimony under a subpoena issued under subsection (a) may be accompanied, represented, and advised by counsel, who may raise objections based on matters of privilege in accordance with the rules applicable to depositions in

civil cases. If such person refuses to answer any question, a petition may be filed in circuit court under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with Article 106 of the Code of Criminal Procedure of 1963.

(6) *Witness fees and allowances.* Any person appearing for oral testimony under a subpoena issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the circuit court.

(i) *Custodians of documents, answers, and transcripts.*

(1) *Designation.* The corporation counsel shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section.

(2) Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual, except as determined necessary by the corporation counsel and subject to the conditions imposed by him or her for effective enforcement of the laws of this city, or as otherwise provided by court order.

(3) *Conditions for return of material.* If any documentary material has been produced by any person in the course of any investigation pursuant to a subpoena under this section and:

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any city agency involving such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(j) *Judicial proceedings.*

(1) *Petition for enforcement.* Whenever any person fails to comply with any subpoena issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the corporation counsel may file, in the circuit court of any county in which such person resides, is found, or transacts business, or the circuit court of the county in which an action filed pursuant to Section 1-22-030 is pending if the action relates to the subject matter of the subpoena and serve upon such person a petition for an order of such court for the enforcement of the subpoena.

(2) *Petition to modify or set aside subpoena.*

(A) Any person who has received a subpoena issued under subsection (a) may file, in the circuit court of any county within which such person resides, is found, or transacts business, and

serve upon the corporation counsel a petition for an order of the court to modify or set aside such subpoena. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the circuit court of the county in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph (A) must be filed:

(i) within 20 days after the date of service of the subpoena, or at any time before the return date specified in the subpoena, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by the corporation counsel.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the subpoena to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the subpoena, in whole or in part, except that the person filing the petition shall comply with any portion of the subpoena not sought to be modified or set aside.

(3) *Petition to modify or set aside demand for product of discovery.* In the case of any subpoena issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the circuit court of the county in which the proceeding in which such discovery was obtained is or was last pending, a petition for an order of such court to modify or set aside those portions of the subpoena requiring production of any such product of discovery, subject to the same terms, conditions, and limitations set forth in subparagraph (j)(2) of this section.

(4) *Jurisdiction.* Whenever any petition is filed in any circuit court under this subsection (j), such court shall have jurisdiction to hear and determine the matter so presented, and to enter such orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(k) *Disclosure exemption.* Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under subsection (a) shall be exempt from disclosure under the Illinois Administrative Procedure Act.

1-22-060 Procedure.

The Illinois Code of Civil Procedure shall apply to all proceedings under this chapter, except when that code is inconsistent with this chapter.