

ORDINANCE NO. 1580

AN ORDINANCE OF THE CITY COUNCIL OF CITY OF FONTANA, CALIFORNIA, RELATING TO POLICE RESPONSE TO FALSE ALARMS; RECOVERING COSTS RELATED TO RESPONSES TO FALSE ALARMS, AND AMENDING ARTICLE IV OF THE FONTANA MUNICIPAL CODE TITLED BURGLAR ALARMS.

WHEREAS, the Fontana Police Department annually responds to over 8,000 alarms per year, of which approximately 99 percent are false, and

WHEREAS, police department responses to false alarms constitute approximately seven percent of calls for police service in the City of Fontana, and

WHEREAS, responses to false alarms thereby may endanger the public by preventing, diverting, or delaying police officers from patrolling a neighborhood; responding to legitimate calls for police service; or investigating and solving crimes, and

WHEREAS, the costs associated with police department responses to false and unverified alarms constitute a waste of tax dollars, and

WHEREAS, the costs associated with police responses to false alarms currently being borne by the City confers a private benefit on Alarm Company Operators because the Alarm Company Operators, in effect, pass on the costs and obligations of their businesses to the City by abdicating their responsibility to verify alarm activations through the use of available technologies and/or the use of private security personnel;

WHEREAS, this allocation of a private benefit is considered a “gifting of public funds” contrary to the public interest, and may result in diminished public safety due to reduced Police Department resources that may be used to respond to urgent and legitimate public safety matters;

WHEREAS, the use of tax dollars to cover the costs of responses to false alarms unfairly requires the estimated 75 percent of City taxpayers who do not own alarms to subsidize the costs of responses to false alarms to the detriment of their public safety, and

WHEREAS, certain Alarm Company Operators in the City provide private response services to determine if the alarm activation is false for a fee, but most Alarm Company Operators and alarm owners instead rely on the “free” service provided by the Fontana Police Department, and

WHEREAS, continued Police Department response to false alarm activations is hazardous and unnecessarily puts police officers, citizens, and visitors at risk, and

WHEREAS, Alarm Company Operators are in a superior position to alarm users to significantly reduce the instances of false alarms through proper installation, servicing and maintenance of alarm systems, and through education and instruction of alarm users and employees of alarm users.

THE CITY COUNCIL OF THE CITY OF FONTANA DOES ORDAIN AS FOLLOWS:

SECTION 1 AMENDMENT. Article IV of the Fontana Municipal Code is hereby amended in its entirety to read as follows:

ARTICLE IV. BURGLAR ALARMS

FALSE ALARMS

Sections:

22-116	Short Title and Purpose.
22-117	Definitions.
22-118	Certain Devices, Systems, Uses Prohibited.
22-119	Verified Response Required.
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22-129	Appeals and Contested Fines.
22-130	Mailing of Notices.
22-131	No Duty or Obligation.
22-132	Powers of the Chief of Police.

22-116 Short Title and Purpose.

(A) This ordinance shall be known as the False Alarm Ordinance and may be cited as such. The purpose of the False Alarm Ordinance is to regulate alarm system users, alarm systems, and Alarm Company Operators in order to minimize the occurrence of false alarm activations within the City of Fontana.

(B) A violation of any provision of this Article shall be deemed an infraction or a misdemeanor, in the City Attorney's discretion, and shall be punished as provided in Section 1-7 of the Fontana Municipal Code. Each day, or portion thereof, during which

the violation of any provision of this Article is maintained or continued shall be deemed a separate and distinct violation. A violation of any provision of this Article shall constitute a nuisance.

22-117 Definitions.

Unless the context or subject matter otherwise requires, terms defined herein shall have the following meanings when used in this chapter:

(A) "Alarm System" or "Alarm Device" means any system, device, or mechanism which, when activated, transmits a telephonic, wireless, electronic, video, or other form of message to an Alarm Company Operator, or some other number, or emits an audible or visible signal that can be heard or seen by persons outside the Protected Premises, or transmits a signal beyond the Premises in some other fashion, except any system, device, or mechanism primarily protecting a motor vehicle or a medical alert alarm. An Alarm System or Alarm Device may consist of one or more components (e.g. motion detector, window breach detector, or similar components) all reporting to a central unit/system panel which, in turn, is connected to or reports to an Alarm Company Operator via telephonic, wireless, electronic, video, or other form of message. Non-Monitored Alarm Systems are also included in this definition.

(B) "Alarm Company Operator" means any person, individual, partnership, corporation, or other form of association that engages in business or accepts employment to install, maintain, alter, sell on premises, monitor, or service Intrusion, Property, Burglary, Robbery, Panic Alarms, or other "Alarm Systems" located in the City of Fontana. This includes Alarm Company Operators that are located outside the city limits of Fontana and which monitor alarms installed within the city limits of Fontana.

(C) "Alarm System User" means the Person having or maintaining a Property, Intrusion, Burglary, Robbery, Panic, or other Alarm System.

(D) "Burglary Alarm" see "Property Alarm".

(E) "Chief of Police" means the Chief of the Fontana Police Department, or his or her designee.

(F) "Department" shall mean the Finance and Administrative Services Department of the City of Fontana.

(G) "Director" shall mean the Management Services Director, or his or her designee.

(H) "False Alarm" means the reporting of the activation of any Monitored or Non-Monitored Alarm System where police arrive at the Premises and determine that there is no evidence of intrusion, commission of an unlawful act, or emergency on the Premises that would warrant a call for police assistance or investigation. An alarm shall

be presumed to be false if the responding police do not locate evidence of intrusion, commission of an unlawful act, or emergency on the Premises that might have caused the alarm to sound. When responding police find unsecured doors or windows where there is no evidence of forced entry or other evidence of criminal intent, the alarm is presumed to be false. This definition includes signals activated by negligence, accident, mechanical failure, and electrical failure; signals activated intentionally in non-emergency situations; and signals for which the actual cause is unknown. An alarm is not false if the Alarm User or Alarm Company Operator proves that:

- (1) An individual activated the alarm based on a reasonable belief that an emergency or actual or threatened criminal activity requiring immediate response existed; or
- (2) The security system was activated by a violent condition of nature, including but not limited to tornadoes, floods, earthquakes and lightning, or by an electrical surge that caused physical damage to the system.

(I) "Fire Alarm" means a signal initiated by a device such as a manual fire alarm box, automatic fire detector, waterflow switch, smoke detector, or other device which, when activated, is indicative of the presence of a fire or fire signature. Fire alarms shall be exempt from the provisions of this chapter except for fire alarms called in erroneously as an Intrusion, Burglary, Robbery, Property, or other alarm. In these situations, the Alarm Company Operator shall be assessed a False Alarm administrative fine.

(J) "Intrusion Alarm" see "Property Alarm".

(K) "Monitored Alarm System" means any system, device, or mechanism which, when activated, transmits a telephonic, wireless, electronic, video, or other form of message or communication to a private monitoring company, other number, or person who can then notify police that an alarm has been activated. This includes all systems, which transmit telephonic, wireless, electronic, video, or other form of message from an alarm installed within the city limits of Fontana to any location outside of Fontana (e.g., an alarm monitoring center located in a state other than California). All alarms that are monitored, except fire alarms, are included within the definition of "Monitored Alarm System"; e.g., any monitored Burglary, Intrusion, Panic, Premises, Property, Robbery, or other type of Alarm Device.

(L) "Non-Monitored Alarm System" means any Alarm System that emits an audible or visible signal that can be heard or seen by persons outside the Protected Premises but which is not monitored by an Alarm Company Operator.

(M) "Panic Alarm" see "Robbery Alarm".

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(N) "Person" means any individual, partnership, corporation, trust, incorporated or unincorporated entity, or other entity or group of persons, but excludes the United States, the state of California, and any political subdivision or municipal corporation thereof.

(O) "Police Department" or "Police" means the Fontana Police Department, and includes other law enforcement agencies assisting the Fontana Police Department.

(P) "Premises" or "Protected Premises" means any area and any portion of any area protected by an Alarm System.

(Q) "Property Alarm", "Intrusion Alarm", and "Burglary Alarm" mean any system, device, or mechanism for detection and reporting of any unauthorized entry or attempted entry or property damage upon real property protected by the system which may be activated by sensors and, when activated, transmits a telephonic, wireless, electronic, video, or other form of message, or emits an audible or visible signal that can be heard or seen by persons outside the Protected Premises, or transmits a signal beyond the Protected Premises. For purposes of this ordinance, alarms on Automatic Teller Machines (ATMs) are included in this definition.

(R) "Responder" means a private guard, alarm company guard, private entity, or person contacted by an Alarm Company Operator, or any other person, who verifies that there is evidence of intrusion, commission of an unlawful act, or emergency on the premises that would warrant a call for Police assistance or investigation for a Property, Intrusion, or Burglary Alarm. Responders for Alarm Company Operators requesting Police response will notify the Police dispatcher what Alarm Company Operator requested them to respond. Responders will meet Police at the Premises.

(S) "Robbery Alarm" and "Panic Alarm" mean any system, device, or mechanism, manually activated by an individual on or near the Premises, to alert others that a robbery or any other crime is in progress, or that the user is in need of immediate assistance or aid in order to avoid injury or serious bodily harm, which meets the following criteria:

- (1) The system is installed on real property (the "Protected Premises");
- (2) It is designed to be manually activated by an individual for the purpose of summoning assistance to the Premises;
- (3) It transmits a telephonic, wireless, electronic, video, or other form of message or emits an audible, visible, or electronic signal that can be heard, seen, or received by persons outside the Protected Premises.

(T) "Valid Alarm" means a Property, Intrusion, Burglary, Robbery or Panic Alarm activation to which Police respond and determine that there is evidence of

intrusion, commission of an unlawful act, or emergency on the Premises that might have caused the alarm to sound.

(U) “Verified Alarm” means an alarm which a Responder, by on-site verification or through the use of a remote audio or video system monitored by the Alarm Company Operator, has verified that a crime, attempted crime, or other emergency occurring at the Premises protected by the alarm is occurring or about to occur.

22-118 Certain Devices, Systems, Uses Prohibited.

(A) No person shall operate or use an Alarm System that emits an audible sound where such emission does not automatically cease within ten minutes.

(B) No person shall operate or use an Alarm System, which automatically dials the Fontana Police Department directly and delivers a prerecorded message.

22-119 Verified Response Required.

(A) The Police Department will not respond to Property Alarms, Intrusion Alarms or Burglary Alarms unless they are Verified Alarms as defined by this Article. Even if an alarm is verified, exigent circumstances may arise that prevent the Police Department from responding to verified alarm activations due to the availability of resources. The Police Department is under no legal duty or obligation whatsoever to respond to any Property Alarm, Intrusion Alarm or Burglary Alarm activation and may respond, in its discretion, as police resources allow and as Police Department supervision and management deem appropriate.

(B) Police Department response to Robbery Alarms, Panic Alarms and Medic Alarms does not require a prior Verified Response. Exigent circumstances may arise, however that prevent the Police Department from responding to Robbery, Panic, and Medic-alarm activations due to the availability of resources. The Police Department is under no legal duty or obligation whatsoever to respond to any Robbery Alarm, Panic Alarm or Medic Alarm activation and may respond, in its discretion, as police resources allow and as Police Department supervision and management deem appropriate.

22-120 Alarm Business Permit Required.

(A) Any Alarm Company Operator installing, maintaining, altering, selling on premises, monitoring, or servicing Alarm Systems within the city limits of Fontana, whether that company is located within California or outside California, is required to maintain a valid City of Fontana alarm business permit in order to install, maintain, alter, sell on premises, monitor, or service Alarm Systems within the City of Fontana.

(B) Operation without a valid alarm business permit shall constitute an infraction or a misdemeanor in the City Attorney’s discretion shall be punished as provided in Fontana Municipal Code section 1-7. Each day during which the violation is

maintained or continued shall be deemed a separate violation. Operation without a valid alarm business permit is a nuisance and may also result in civil action against those companies continuing to operate without a valid City of Fontana alarm business permit.

(C) An alarm business permit cannot be assigned, sold or transferred and may be revoked or suspended pursuant to section 22-124 of this Article. Issuance of an alarm business permit does not create any property right in that permit.

22-121 Alarm Business Permit Application.

(A) Any Alarm Company Operator installing, maintaining, altering, selling on premises, monitoring, or servicing Alarm Systems within the city limits of Fontana, whether that company is located within California or outside California shall, within 30 days after the effective date of the ordinance codified in this Article, apply to the Director, on a form to be furnished by the Chief of Police, for a permit to operate. Such application shall be signed by the individual proprietor of such business, or by a partner, or by the proper corporate official, as is appropriate for the form of the business seeking the permit, and shall set forth the owner's name, age, business and residence address if a natural person, the name, age, business and residence address of each partner if a partnership, and the names of the principal officers and business address if a corporation, and shall include a statement that the applicant will inform the Police Department within ten days after any substantial change in the information required by the ordinance codified in this Article.

(B) Applicants already doing business in the City on the effective date of the ordinance codified in this Chapter may continue to do business while their permit applications are being processed. An applicant not previously doing business in the City on the effective date of the ordinance codified in this Chapter shall not commence doing business until its application is approved.

(C) Applications for all alarm business permits required under this section shall be accompanied a fee the amount of which shall be established by resolution of the City Council.

22-122 Term of Alarm Business Permit and Renewal.

(A) Alarm business permits shall expire on the first day of the anniversary month following the year of issue.

(B) An alarm business permit renewal shall be dated the first day of the anniversary month each year. The renewal permit will not be issued until a new application is submitted to the City, and the alarm business permit fee and any administrative fines or penalties previously imposed on the Alarm Company Operator are paid. A late charge, the amount of which shall be established by resolution of the City Council, will be assessed on all permit holders who do not pay the required renewal

fee prior to expiration of their existing permits. A suspended permit may be renewed only as provided in section 22-126.

22-123 Current Information Required.

Within ten days following any change of circumstances which renders obsolete any of the information submitted pursuant to section 22-121, the permittee shall file an amendment to his application setting forth the currently accurate information. No additional fee shall be required.

22-124 Suspension and Revocation of Alarm Business Permit.

The Chief of Police may suspend or revoke, in his or her discretion, an alarm business permit based upon any of the following grounds:

- (1) Any false or incomplete statement made on the permit application.
- (2) Programming of an automatic dialer to select any City of Fontana telephone line.
- (3) Maintenance, installation or use of the Alarm System in violation of any applicable federal, state or local law, ordinance or regulation, including the requirements of this Article.
- (4) Failure to provide current information as required in section 22-123.
- (5) Failure of an Alarm Company Operator employee to identify him/herself by operator number, company name, address and phone number at the request of a Fontana Police dispatcher as required in section 22-127.
- (6) Failure to remit payment of fees, administrative fines or penalties in accordance with section 22-128.
- (7) Failure of an Alarm Company Operator to comply with any applicable federal, state or local law, ordinance or regulation governing the Alarm Company Operator's operations.
- (8) The criminal conviction of an owner, principal, officer or operator of an Alarm Company Operator for any felony whatsoever, or any misdemeanor offense involving moral turpitude.

The Chief of Police's decision to either suspend or revoke the alarm business permit shall be based upon the severity of the violation, including, but not limited to, consideration of the following factors:

- (1) The materiality and nature of any false or incomplete statement made on the permit application;
- (2) The number and severity of any prior instances of failure to comply with federal, state or local laws, ordinances or regulations, including the provisions of this Article, by the Alarm Company Operator ;
- (3) The amount of fees, administrative fines or penalties owed and unpaid by the Alarm Company Operator;
- (4) The nature of the criminal conviction of an owner, principal, officer or operator of an Alarm Company Operator.

If the Chief of Police determines that there is cause for the suspension or revocation of a permit, he shall mail a notice of suspension or revocation to the principal of the Alarm Company Operator, as provided on the alarm business permit, stating that the suspension or revocation will be effective thirty (30) days after the date of mailing, unless a notice of appeal is filed with the city clerk on or before the effective date.

Alarm Company Operators operating an Alarm System after the alarm business permit has been suspended or revoked shall be guilty of an infraction or misdemeanor in the City Attorney's discretion and shall be punished as provided in Fontana Municipal Code section 1-7. Each day during which the violation is maintained or continued shall be deemed a separate violation.

22-125 Appeals of Suspension and/or Revocation Orders.

Any person aggrieved by the action of the Chief of Police in suspending or revoking an alarm business permit under this Article may, within ten (10) days after such action, appeal to the City by filing written notice with the city clerk. The Deputy City Manager of Administration or his/her designee shall then review the determination or decision of the Chief of Police in the matter appealed from and may approve, disapprove or modify such determination or decision. Such review shall be conducted no later than thirty (30) days after the date of the filing of the appeal, unless both the Chief of Police and appellant agree in writing that the Deputy City Manager of Administration may decide the matter at a later date, not to exceed ninety (90) days from the date of the filing of the written notice of appeal with the city clerk. The action of the Deputy City Manager of Administration under this section shall be final and conclusive.

22-126 Reinstatement After Suspension.

An Alarm Company Operator whose alarm business permit has been suspended may have permit reinstated upon proof, to the satisfaction of the Chief of Police, that the grounds for suspension no longer exist and upon payment of a reinstatement fee in an amount that shall be established by resolution of the City Council.

22-127 False Alarm and Prohibited Call Administrative Fines.

(A) False Alarm Response Administrative Fine. An Alarm Company Operator shall pay to the City of Fontana, within thirty (30) days of the invoice, an administrative fine for each False Alarm generated by each Alarm System monitored by the Alarm Company Operator. An Alarm System User shall be responsible for the payment of the false alarm administrative fee for all False Alarms for non-monitored alarm systems. The amount of the administrative fine shall be \$200.00 per each False Alarm.

(B) Prohibited Call Administrative Fine. An Alarm Company Operator shall pay to the City of Fontana, within 30 days of the invoice, an administrative fine for each prohibited call. A prohibited call is a call to Police dispatch by an Alarm Company Operator employee or agent requesting Police response to a Property Alarm, Intrusion Alarm, or Burglary Alarm activation that is not verified, whether canceled after the initial call or not. The amount of the prohibited call administrative fine shall be \$150.00 per prohibited call.

(C) The failure of an Alarm Company Operator employee to identify him/herself by operator number, company name, address and phone number at the request of a Fontana Police dispatcher may result in the suspension or revocation of the Alarm Company Operator's alarm business permit.

(D) The False Alarm Response and Prohibited Call administrative fines are cumulative and not exclusive. The amount of the False Alarm Response and Prohibited Call administrative fines may be amended by resolution of the City Council.

22-128 Penalties for Failure to Pay Fees or Fines.

(A) Payment of any fee or administrative fine under this Article is due within thirty (30) days from the invoice date or within an extension of time granted by the Director. If payment is not received between one (1) and thirty (30) days after the date it became due, there shall be added to the amount, a penalty of ten percent (10%) of the fees owing. If payment is later than thirty (30) days after the original date due, a penalty of twenty percent (20%) of the fees shall be assessed. If payment is not received within sixty (60) days of the original date due, then interest shall accrue on the fees and penalties at 1% per month.

(B) The permittee shall be notified by mail of the amount of any penalties so added or assessed, and the same shall become due and shall be paid within ten (10) days from the date of such notice.

(C) If any fees, administrative fines or penalties remain unpaid after sixty (60) days from the invoice date, the City of Fontana alarm business permit required to operate the Alarm Company Operator in the City of Fontana may be suspended or revoked.

22-129 Appeals and Contested Fees.

(A) The manner of assessing administrative fines and methods to appeal such fines shall comply with all the procedures specified in Article XI of Chapter 2 of this Code, unless in conflict with the provisions of this Article.

(B) A separate written request for an administrative hearing must be filed for each administrative fine assessed. Multiple administrative fines, even if assessed against the same Alarm Company Operator or Alarm System User, cannot be appealed on a single request for hearing form.

(C) Within ten (10) days of the filing of a request for an administrative hearing, the City Clerk shall give notice to the requesting party of the date, time and place of the hearing. The hearing shall be set on a date that is no less than ten (10) days and no more than sixty (60) days after the date of the notice.

(D) A request for an administrative hearing must be accompanied by a deposit in the amount of the administrative fine. A request for a hearing shall not be complete and shall not be accepted unless it is accompanied by the deposit required by this section. Should the requesting party prevail on appeal, said amount will be refunded within ten (10) days of the date of decision.

(E) The hearing officer on all appeals of administrative fines assessed pursuant to this Article shall be the Deputy City Manager of Administration. A representative for the Alarm Company Operator that has been assessed the fine, or the Alarm System User who has been assessed the fine, must appear at the administrative hearing. The failure of the Alarm Company Operator representative or Alarm System User to appear at the administrative hearing shall constitute a waiver of the right to a hearing on the citation and any defenses to the citation that the Alarm Company Operator or Alarm System User may have had, and the Alarm Company Operator's or Alarm System User's deposit shall be forfeited without further action. A failure to appear at the administrative hearing shall also constitute a failure to exhaust administrative remedies.

(F) The remedies set forth in this article are non-exclusive and the City may seek any and all legal and equitable relief permitted by law in addition to those remedies set forth in this article.

22-130 Mailing of Notices.

Any notice required by this Article to be mailed shall be sent by ordinary mail, addressed to the address as reflected in the records of the Director. Failure to receive such notice shall not relieve the obligation to pay any fee, interest, or penalty, nor shall such failure extend any time limit. It is the responsibility of the Alarm Company Operator to inform the Director in writing about a change in address.

22-131 No Duty or Obligation.

Nothing in this Article imposes or creates any express or implied duties or obligations on the part of the City, its Police Department or any other governmental agency. Nothing in this Article creates any express or implied duty or obligation for the Police Department to respond to an alarm activation of any sort, whether verified or not. Any and all liability or consequential damage resulting from the failure to respond to an alarm activation of any sort is hereby disclaimed and governmental immunity as provided by law is retained by the City.

22-132 Powers of the Chief of Police.

The Chief of Police shall have broad discretion to promulgate, execute and enforce policies, procedures and directives as may in his discretion be necessary to implement the provisions of this Article. Such powers shall include, but are not limited to, the power to promulgate, execute and enforce a policy regarding dispatch of officers to verified and unverified alarm activations that are not inconsistent with the provisions of this Article.

SECTION 2. SEVERABILITY.

Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

SECTION 3. C.E.Q.A.

The City Council finds and determines that the enactment of this Ordinance is not a project under the California Environmental Quality Act (CEQA) (Cal. Pub. Resource Code §§ 21000 et seq.) in that the activities described in the Ordinance are a continuing administrative activity of the City involving general policy and procedure making and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. (State CEQA Guidelines, Cal. Code of Regs., Title 14, § 15378.) Therefore, no environmental assessment is required or necessary.

SECTION 4. EFFECTIVE DATE.

This ordinance shall take effect thirty (30) days after the date of the adoption and prior to the expiration of fifteen (15) days from the passage thereof, shall be published by the City Clerk at least once in the Herald News, a newspaper of general circulation, published and circulated in the City of Fontana, and henceforth and thereafter the same shall be in full force and effect.

APPROVED AND ADOPTED this 9th day of September, 2008.

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, California, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance adopted by the City Council and was introduced at a regular meeting thereof, held on the 26th day of August, 2008 and was finally passed and adopted not less than five (5) days thereafter on the 9th day of September, 2008 by the following vote to wit:

AYES:
NOES:
ABSENT:

City Clerk of the City of Fontana

Mayor of the City of Fontana

ATTEST:

City Clerk