

ORDINANCE NO. 2016-22

AN ORDINANCE REPEALING AND REPLACING CHAPTER 5 – BUILDINGS AND BUILDING REGULATIONS, ARTICLE I- IN GENERAL, SECTION 5-3 OF THE CODE OF ORDINANCES, BOERNE, TEXAS, RELATING TO ALARM SYSTEMS; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR CRIMINAL PENALTIES NOT TO EXCEED \$300 PER VIOLATION; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, the 2015 Boerne Police Department received in excess of 1100 panic and burglar alarm calls for service and dispatched patrol units in response to such calls, all of which proved to be false alarms; and

WHEREAS, the annual cost of responding to alarm calls for service is estimated at \$55,000; and

WHEREAS, the number of false alarms responded to by Police Department personnel has remained unabated over the past several years; and

WHEREAS, statistics obtained from other local governments indicate that false alarms from burglar and panic or holdup alarm systems typically range from 90 to 98% of all alarm calls for service received; and

WHEREAS, the City desires to reduce the number of false alarm notifications by encouraging the proper installation, operation and maintenance of alarm systems by both the owners and users of such systems and the companies that sell, install and monitor them; and

WHEREAS, the City Council desires to implement measures designed to reduce the number of false alarms and the police department responses to such alarms, increase the ability of the City to more effectively monitor and respond to criminal activity and to recover costs associated with alarm regulation and false alarms as much as possible to minimize waste and maximize efficient utilization of available Police Department resources.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOERNE, TEXAS:

Section 1. That the findings set forth in the preamble of this Ordinance are determined to be true and correct and are hereby adopted.

Section 2. That Article I of Chapter 5 of the Code of Ordinances, Boerne, Texas, is hereby amended in its entirety to read as follows:

ARTICLE I. Section 5-3 BURGLAR ALARMS, PANIC ALARMS AND OTHER SIMILAR ALARM SYSTEMS

Sec. 5-3 (a) Application; purpose.

This article is intended to specifically encompass 'burglar alarms,' 'holdup alarms,' and 'panic alarms,' whether audible or inaudible (silent), and other such alarm systems, but not audible alarms affixed to motor vehicles, personal emergency response system alarms, or fire alarms. It is the purpose of this article to:

1. Regulate the activities and establish the responsibilities of persons who purchase, rent, operate or use an alarm system subject to this article and, to the full extent permitted by Texas law, persons who engage in the business of selling, leasing, renting, installing, maintaining or monitoring such alarm systems pursuant to a permit or license issued by the State of Texas; and
2. Promote the improved reliability of alarm systems governed by this article to insure that the police department will not be unduly diverted from responding to actual criminal activity as a result of responding to false alarms.

Sec. 5-3 (b) Definitions.

In this article, unless the context clearly otherwise requires:

1. *12-month period* means a calendar year beginning January 1 and ending on December 31.
2. *Activate* means the completion of all steps necessary to render an alarm system capable of carrying out its intended function of producing an alarm notification under appropriate circumstances.
3. *Alarm notification* means the receipt of notice transmitted to dispatch or the police department that an alarm signal has been detected and that a police or fire department response is being requested.
4. *Alarm signal* means the transmission of a signal, whether by electronic or other means, by an alarm system to an alarm systems company in response to an incident at the alarm site of the type the alarm system was designed or intended to detect.
5. *Alarm site* means the single fixed premises or location where an alarm system is operated, used, installed or rendered capable of being activated.
6. *Alarm subscriber* means a person who directly or through another person operating or using an alarm system through an agreement with an alarm systems company. Each alarm subscriber is deemed to be a person who operates or uses, causes or allows the operation or use of the alarm system and will be liable for the payment of permit fees, fines or penalties, or the performance of other duties and responsibilities as provided in this article.
7. *Alarm system* means any mechanical, electrical, electronic or radio-controlled alarm device or equipment designed to or that does emit or transmit an alarm signal that is designed or intended to produce an alarm notification. *Alarm system* includes, but is not limited to, silent, audible, panic, holdup, burglar and local alarm systems. The term does not include a personal emergency response system alarm, a fire alarm system designed solely to detect fire or smoke or an alarm installed in a motor vehicle solely to prevent theft of the vehicle.

8. *Alarm systems company* means any person who engages in the business of monitoring, selling, leasing, renting, maintaining, servicing, repairing, altering, replacing, or installing alarm systems or rendering such systems capable of generating an alarm signal.
9. *Automatic dialer* or *automatic dialing device* means any electrical, electronic, mechanical or other device capable of being programmed to send an alarm notification in the form of a prerecorded voice message to dispatch or the police department over a telephone line, radio or other communication system when an alarm signal is generated.
10. *Common cause* means a technical difficulty or malfunction that causes an alarm system to generate a series of two or more false alarms.
11. *Deactivate* means to disconnect or render an alarm system disabled so as to prevent any possibility that the alarm system will generate an alarm signal.
12. *False alarm* means an alarm notification generated when an emergency of the kind for which the alarm system was designed did not in fact exist and a response is made by the police department within thirty minutes of the alarm notification and the police department determines from an inspection of the interior or exterior of the premises that the alarm was false.
13. *Individual facility* means, in the context of a multi-unit housing facility, each unoccupied individual residential unit (including an apartment unit), office, storage room, utility room, shop, game room, exercise room, laundry room, hallway, vending area, lobby or similar non-residential facility.
14. *Local alarm system* means an alarm system designed and operated to generate audible or visual alarm signals at the alarm site when activated.
15. *Multi-unit housing facility* means a residential multi-unit apartment complex, town homes, condominiums, or similar housing facilities.
16. *Non-residential alarm site* means an alarm site that is not a 'residential alarm site' as defined by this section.
17. *Panic* or *holdup alarm system* means an alarm system that, when manually triggered by a person at the alarm site, generates an alarm signal indicating a holdup or other life-threatening emergency requiring a police department response.
18. *Person-in-control* means a person who owns, leases, possesses, resides at, or manages any part of the alarm site.
19. *Police chief* means the chief of the police department, or designee or any employee of the police department assigned by the police chief to perform any duties prescribed by this article.
20. *Police department* means the city police department.
21. *Residential alarm site* means an alarm site used solely for residential purposes, including an occupied apartment or other residential unit located in a multi-unit housing facility. Each occupied apartment or other individual residential unit in which an alarm system is operated, used, installed, or placed shall be a separate residential alarm site. All other alarm sites are non-residential.
22. *Verify an alarm signal* means to attempt to contact the alarm site and alarm subscriber or other person-in-control of the alarm site by telephone calls of at least six rings each to two separate telephone numbers, regardless of whether actual contact with an individual is made, to determine whether an alarm signal is valid.

Sec. 5-3 (c) Alarm subscriber; violation; penalty.

All duties and responsibilities for the use or operation of an alarm system at an alarm site and the obligation to pay all fines, penalties and other amounts authorized in this article in connection with such system shall be imposed, jointly and severally, on the alarm subscriber and any person-in-control at the alarm site.

Sec. 5-3 (d) No duty created.

The alarm notification by an alarm system shall not create any duty or liability on the part of the city or guarantee any police department or other response from the city. Nothing in this article shall be construed to waive the city's governmental immunity from suit or from liability.

Sec. 5-3 (e) Right to inspect.

The police chief shall have the right to inspect any alarm system at an alarm site at any reasonable time to determine whether it is being used in conformity with this article.

Sec. 5-3 (f) Police response to alarm notification.

1. *Policy.* Any police department response to an alarm notification shall be governed by the provisions of this section and the rules and regulations, as applicable, promulgated by the police chief.
2. *Information to be provided by alarm systems company.* The police chief will make available to an alarm systems company a copy of this Ordinance and any revisions hereto. The alarm systems company should provide its alarm subscriber with information concerning this Ordinance.

Sec. 5-3 (g) Disclosure of alarm systems.

The police department shall maintain a complete record of all alarm systems installed or capable of being activated in the city, based upon the reports required to be provided by alarm companies pursuant to Section 1702.286(b), Texas Occupations Code, or information regarding such alarm systems derived from other sources.

Sec. 5-3 (h) Alarm system companies; duty to maintain and provide records.

1. *Records to be provided.* It shall be the duty of each alarm systems company to maintain a record of all alarm systems the company has installed or rendered capable of being activated in the city, as required by Section 1702.286(b), Texas Occupations Code. The records required to be maintained by this subsection shall be maintained for at least two years from the date of their creation and shall be available for inspection and duplication upon demand by the police chief. At the discretion of the police chief, any such request may be made electronically, in writing, or by personal delivery to an alarm systems company.
2. *Periodic reports to be provided.* A true and correct list of all alarm systems installed, rendered capable of being activated, maintained or monitored in the city by an alarm systems company shall be provided to the police chief upon request. Such list shall be provided in an electronic or other format as may be required by the police chief.
3. *Violation; penalty.* A person who violates any provision of this section is guilty of a separate offense for each day or portion of a day during which the violation is committed, continued or permitted. Each offense is punishable as provided herein.

Sec. 5-3 (i) Duty of person notified by police department to provide access to premises.

Any person who is notified by a member of the police department that an alarm signal has been received from an alarm system and who is able to give access to the alarm site shall come to the

alarm site within one hour of the time such person is notified of such signal and shall provide the police department any necessary access or assistance.

Sec. 5-3 (j) False alarm signals prohibited; exceptions.

1. No person shall intentionally or knowingly cause an alarm system to be triggered for any purpose other than an emergency or threat of emergency of the kind for which the alarm system was designed to give notice; provided, however, it shall be an affirmative defense to prosecution under this subsection that the alarm system was triggered solely for the purpose of testing the alarm system and the person who tested the alarm system was duly licensed under Chapter 1702 Texas Occupations Code and took reasonable precautions to avoid any alarm notification being sent to the police department.
2. This section shall not be deemed to apply to conduct prohibited by Chapter 42.06 of the Texas Penal Code, as presently enacted or subsequently amended.

Sec. 5-3 (k) Penalties for false alarms.

False alarm. The penalties for false alarms are as follows:

1. The first three (3) false alarms received within a 12-month period will receive a warning;
2. The receipt of the fourth (4th) and fifth (5th) false alarm from an alarm site within a 12-month period will result in the alarm subscriber of an alarm system receiving a Class C Misdemeanor citation punishable, upon conviction, by a fine of not less than \$50 nor more than \$150;
3. The receipt of the sixth (6th) and seventh (7th) false alarm from an alarm site within a 12-month period will result in the alarm subscriber of an alarm system receiving a Class C Misdemeanor citation punishable, upon conviction, by a fine of not less than \$75 nor more than \$200; and
4. The receipt of eight (8) or more false alarms from an alarm site within a 12-month period will result in the alarm subscriber of an alarm system will be charged with a Class C Misdemeanor punishable, upon conviction, by a fine of not less than \$100 nor more than \$250.

Sec. 5-3 (l) Penalty Enforcement—Class C Misdemeanor.

1. *Issuance of a Citation.* The member of the police department responding to the false alarm or alarm notification as delineated in Section 5.3(f)(l), may issue a citation to a person he or she reasonably believes to be in violation of this Ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alarm subscriber or to any general addressee at the alarm site address if the member of the police department is unable to verify the identity of the alarm subscriber.
2. *Citation Contents.* The citation issued shall contain the following information:
 - a. The date of the false alarm or alarm notification if there is no valid alarm permit;
 - b. The address of the alarm site, and if the alarm site is a multi-unit housing facility, the identification of the individual facility where the false alarm occurred; and
 - c. The date and time the alleged violator is required to appear in the municipal court (such date shall not be less than twenty (20) days from the date the citation was issued). The alleged violator shall be served a copy of the citation.
5. *Service of the citation.* Service of the citation shall be complete upon either of the following occurrences:

- a. Personal delivery of the citation to the alarm subscriber or to any general addressee at the alarm site address if the member of the police department is unable to verify the identity of the alarm subscriber; or
- b. Mailing a copy of the citation addressed to the alarm subscriber or to any general addressee at the alarm site address if the member of the police department is unable to verify the identity of the alarm subscriber sent certified mail, return receipt requested by and a copy by regular mail. Failure of the alleged violator to accept delivery, pick up or receive a copy of the citation sent via certified mail shall not constitute lack of service. If the alleged violator fails to appear in municipal court, a warrant for his or her arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant

Sec. 5-3 (m) Common cause for a series of false alarms.

1. *In general.* Notwithstanding other provisions in this article to the contrary, false alarms of an alarm system may be accounted for as provided in this section to the extent the false alarms are attributable to a common cause.
2. *Establishment of common cause; conditions.* A series of false alarms shall be deemed as originating from a common cause and counted as one false alarm if all of the following conditions are met:
 - a. The series of false alarms occurs within a seventy-two hour period;
 - b. The cause of the series of false alarms is repaired before it generates additional false alarms;
 - c. Within 15 days after the end of the 72 hour common cause period, an alarm systems company duly licensed under Chapter 1702 of the Texas Occupations Code provides the alarm subscriber with documentation verifying the technical difficulty or malfunction that caused the series of false alarms, and that all necessary repairs have been completed; and
 - d. There are no unpaid fees or penalties under this article due and owing from the alarm subscriber.
3. *Application of section.* This section shall not apply to the same alarm site, alarm system, or alarm subscriber more than once in any 24 month period.

Sec. 5-3 (n) Miscellaneous

1. *Notices.* Any notice required or allowed by this article to be sent by the police chief to an alarm subscriber or other person, unless expressly provided otherwise in this article, shall be considered sufficient if sent by first class U.S. mail to the alarm subscriber's address, billing address or alarm site address.
2. *Development of policies and procedures.* The police chief shall have the authority to institute standards and procedures necessary to implement and enforce this article to ensure the effective utilization of police department resources, and the enhancement of public safety."

Section 3. The provisions of this Ordinance shall take effect on the 90th day next following the date of its passage and approval by the Mayor, and shall apply to all alarm systems within the city limits on or after the effective date of this Ordinance.

Section 4. If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their

application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 5. The City Council officially finds, determines, recites and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Therefore, this Ordinance shall be passed finally on such date and shall take effect as provided above.

PASSED AND APPROVED on this the first reading the 10th day of May, 2016.

PASSED, APPROVED AND ADOPTED on this the second reading the 25th day of May, 2016.

ATTEST:

s/s Lori A. Carroll
City Secretary

APPROVED:

s/s Michael D. Schultz
Mayor

APPROVED AS TO FORM:

s/s Kirsten Cohoon
City Attorney