ORDINANCE NO. 2458

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER, REPEALING AND REPLACING CHAPTER 5.50 AND ADDING CHAPTER 5.51 TO TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE WESTMINSTER MUNICIPAL CODE, RELATING TO ALARM SYSTEMS

WHEREAS, the City of Westminster has the authority, pursuant to Section 7 of Article XI of the California Constitution, to enact regulations for the public peace, morals, and welfare of the city; and

WHEREAS, the Mayor and the City Council of the City of Westminster find that an alarm system service fee would offset the cost of staffing the alarm coordinator position at the Westminster Police Department;

WHEREAS, the Mayor and the City Council find that regulation of alarm systems will promote the efficiency of police responses in the City by regulating the conditions under which alarm systems may be installed and operated, thereby reducing the number of false alarms; and

WHEREAS, the Mayor and the City Council find that false alarms siphon police resources away from real police matters and emergencies and that false alarm responses therefore cost the city needed resources; and

WHEREAS, the Mayor and the City Council find that alarm users who generate an excessive number of false alarms should bear the cost of the police responses; and

WHEREAS, the Mayor and the City Council find that holding alarm users responsible for the cost of police responses to the false alarms will provide an incentive to the alarm users to ensure that very few or no false alarms occur.

NOW THEREFORE, THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 5.50 of Title 5 (Business Taxes, Licenses and Regulations) is hereby repealed and replaced as follows:

Chapter 5.50 Alarm Systems – Permit Requirement

5.50.010 Definitions.

In this chapter and Chapter 5.51, the following definitions shall apply:

A. "Alarm agent" means a person employed by an alarm company whose duties include selling on premises, altering, installing, maintaining, moving repairing,

replacing, servicing, responding, or monitoring an alarm system, or a person who manages or supervises a person employed by an alarm company to perform any of the duties described herein or any person in training for any of the duties described herein.

B. "Alarm company" means a person or entity, regardless of organizational form, which is in the business of selling, leasing, maintaining, servicing, repairing, altering, replacing, moving, installing or monitoring alarm systems in an alarm site.

C. "Alarm coordinator" means the person or persons designated by the chief of police to administer, control and review alarm applications, permits and alarm dispatch requests.

D. "Alarm permit" means a document containing pertinent information about the alarmed premises and its authorized user, as required by the Chief of Police.

E. "Alarm site" means a single premises or location served by an alarm system. Each tenancy, if served by a separate alarm system in a multi-tenant building or complex, shall be considered a separate alarm site."

F. "Alarm system" means an assembly of equipment and devices arranged to signal the presence of a hazardous condition requiring urgent attention to which police customarily respond, and includes devices which emit an audible sound in or around the premises when actuated.

    1. "Commercial alarm system" means an alarm system that is used to detect a hazardous condition in or about a nonresidential structure or area.

    2. "Residential alarm system" means an alarm system that is used to detect a hazardous condition in or about a structure or area that is primarily for nonbusiness purposes and intended for habitation, including individual dwelling unit(s) within a single- or multiple-family structure.

    3. "Alarm user" means a person(s), firm, partnership, corporation, association, organization, company or other entity in control of a premise where an alarm system is located.

G. "Audible alarm" means that type of alarm system which, when activated, emits an audible sound.

H. "Automatic communication device" means any electrical, electronic or mechanical device capable of being programmed to send a prerecorded message, when activated, over a telephone line to the police department.

I. "City" means the City of Westminster or the area within the territorial city limits of the City of Westminster, and such territory outside of this city over which the city has jurisdiction or control by virtue of any constitutional provision or any law.

J. "City manager" means the City Manager, or his/her successor as chief executive officer, of the City of Westminster or his/her designee.

K. "Chief of Police" means the Chief of the Westminster Police Department or his/her designee.

L. "Duress or panic alarm" is a silent signal generated by the manual activation of a device intended to signal a crisis situation requiring a police response.

M. "False alarm" means activation or transmission of any alarm signal causing a police response where an emergency situation does not exist. This shall include mechanical failure, accidental tripping, misoperation, malfunction, misuse or neglect of the alarm system by the owner or lessee of the alarm system or by his employees or agents. It shall not include alarms caused by earthquakes, high winds, verifiable utility failures or external causes beyond the control of the owner or lessee.

N. "Hazardous condition" means any condition that the alarm system was specifically designed to protect from or alert law enforcement about, including but not limited to robbery, burglary, home invasion or other condition, which poses a hazard or threat to persons or property.

O. "Hearing officer" means the city manager or his/her designee.

P. "Person" means any individual, partnership, firm, company, association, joint venture, partnership, club, company, business trust, organization or corporation, or the manager, lessee, agent, officer or employee or any of them, or where the context clearly requires a different meaning.

Q. "Police department" means the Police Department of the City of Westminster, California.

R. "Proprietary alarm" means an alarm system, which is installed, serviced, and monitored by persons not regulated by the Alarm Company Act contained in the State of California Business and Professions Code, Division 3, Chapter 11.6 - Alarm Companies.

S. "Robbery alarm" means a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress.

T. "Verify" means an attempt, by the alarm company, or its representative, to contact the alarm site by telephone or other electronic means, whether or not

actual contact with a person is made, before requesting a police dispatch, in an attempt to avoid an unnecessary alarm response.

5.50.020 Enforcement.

The chief of police shall have sole discretion to enforce the provisions of this chapter.

5.50.030 Business license requirement.

A. No alarm company or alarm agent shall be permitted to sell on premises, alter, install, maintain, move, repair, replace, respond, lease or monitor any alarm system without first obtaining a City of Westminster business license.

B. The alarm company shall include with the business license application a copy of its alarm company license to operate issued by the State of California. Failure to obtain or submit the state license will result in a rejection of a City business license and a prohibition from conducting business in the City.

5.50.040 Alarm user permit requirement.

No alarm user shall operate, or cause to be operated, an alarm system at its site without a valid alarm permit issued by the alarm coordinator. A separate permit is required for each alarm site.

A. The annual fee for an alarm permit or renewal of an alarm permit shall be that specified in the schedule of fees and fines adopted by the city council by resolution.

B. Upon receipt of a completed application form and the permit fee, the alarm coordinator shall issue an alarm permit to an applicant, unless the applicant has:

1. Failed to pay a fine assessed under Chapter 5.51.

2. Had an alarm permit for the site suspended or revoked and the violation causing the suspension or revocation has not been corrected.

C. Any alarm permit issued pursuant to this ordinance or any amendment thereto, is valid indefinitely unless revoked, subject to payment of the annual fee.

D. Each alarm permit application must include the following information:

1. The classification of the alarm site as either residential or commercial.

2. Purpose of the alarm system at the site; i.e., burglary, robbery and/or duress.

3. Full name, address and telephone number of the person who will be the alarm permit holder and be responsible for the proper maintenance and operation of the alarm system.

4. Name of business (if applicable), address and telephone number where the alarm system is located.

5. Nature of premises; i.e., residence, bank, liquor store, jewelry store, etc. Any information about the business as deemed necessary by the chief of police to assure officer safety in a response; i.e., weapons, hazardous materials, dogs, etc.

6. A list of three persons, including addresses and telephone numbers, who can be contacted and will respond to the premises in the event of an emergency or to reset or deactivate the alarm system.

7. Name, address and telephone number of the alarm company that installed the alarm system.

8. Name, address and telephone number of the alarm company monitoring the alarm system if different from (7) above.

E. Any material misrepresentation provided by an applicant shall be sufficient cause for refusal or revocation of an alarm permit.

F. An alarm permit cannot be transferred to another person, entity or alarm site. An alarm user shall inform the alarm coordinator of any change in information on the alarm user permit application within ten (10) business days of the alarm user becoming aware of such information.

G. Information contained in alarm permit applications shall be held in strict confidence by all employees of the City with access to such information.

5.50.050 Proper alarm system operation and maintenance.

A. To assure proper operation and maintenance of an alarm system and to minimize false alarms, the alarm user shall comply with the following:

1. Maintain the premises and alarm system in a manner that will minimize or eliminate false alarms.

2. Instruct all employees and other individuals who have access to the premises in proper use of the alarm system and maintain accurate and complete written operating instructions on site.

3. Assure that on activation of the alarm system and when requested by the police department, the alarm agent or the alarm user responds to the premises in a timely manner (maximum of 45 minutes) and renders any necessary service.

4. An alarm that is audible on the exterior of an alarm site will sound for no more than 10 minutes following activation or, in the case of systems operating under Underwriters Laboratories, Inc. standard 365 or 609, 15 minutes following activation.

5. The alarm system shall not be activated when its power is interrupted or restored, unless a hazardous condition does, in fact, exist.

6. No automatic communication device shall be keyed to any police department telephone line.

7. If the alarm site includes multiple buildings, offices or rooms within a building, or floors within a building, the alarm system shall be adjusted so that the alarm identifies the precise location of alarm activation. This requirement shall only apply to commercial premises and shall not apply to residential premises.

8. Except for proprietary alarm systems, any installation, servicing or monitoring of an alarm system shall be performed only by companies that are licensed by, and in good standing with, the California Department of Consumer Affairs, Bureau of Security and Investigative Services.

B. Intentional activation of an alarm system by any person, when a hazardous condition does not exist, shall result in the alarm user being assessed the actual cost of police response under section 9.55.040.

5.50.060 Monitoring procedure.

A. An alarm company performing monitoring services shall:

1. Report alarm signals by using telephone numbers designated by the police department.

2. Attempt to verify every alarm signal in a timely manner before requesting a police response, except for robbery or panic alarms, which are to be immediately reported.

3. Communicate alarm dispatch requests in a manner and form determined by the police department.

4. Communicate verified cancellations of alarm dispatch requests in a manner and form determined by the police department.

B. The alarm coordinator shall, working with the police department's communications division, designate a manner, form and telephone number for the communication of alarm dispatch requests and a procedure to accept verified alarm cancellations.

5.50.070 Alarm response information recording.

A. Any officer who responds to, or otherwise becomes aware of, an alarm activation shall record or cause to be recorded such information as necessary to permit the alarm coordinator to maintain records.

B. Alarm companies that perform monitoring services must maintain records relating to the dispatch for a period of at least one (1) year following request for police response to an alarm site. Records must include the name, address and phone number of the alarm user, the alarm system zone(s) or point(s) activated, the time of request for police response and evidence that an attempt to verify was made. The alarm coordinator may request copies of such records for individually named alarm users.

5.50.080 Denial or revocation of alarm permit

A. Any alarm site that has had seven (7) or more false alarms within a 365-day period shall subject the alarm user to revocation of the alarm permit. Alarm permit revocation will result in a termination of police response to alarm calls at the premises.

B. If the alarm coordinator denies the issuance or renewal of an alarm permit or suspends or revokes an alarm permit, he or she shall send written notice of the action and the reasons therefore, and a statement of the right to appeal the decision by personal delivery or certified mail, return receipt requested, to both the applicant or alarm user and the alarm company.

5.50.090 Request for Appeal Hearing.

A. Any alarm user may contest the denial, suspension or revocation of an alarm permit by submitting a written request to the chief of police for an appeal hearing, clearly stating the reasons for the appeal, within ten (10) days from the date of service of the penalty, denial or revocation notice (hereafter, the notice). A hearing before the hearing officer shall be set for a date that is not less than fifteen (15), nor more than sixty (60) days from the date the Request for Hearing is filed. The person requesting the hearing (the appellant) shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing.

5.50.100 Appeal Hearing Process.

A. No hearing to contest the denial, suspension or revocation of an alarm permit before a hearing officer shall be held unless and until a written request for a hearing has been timely submitted and any applicable fines have been deposited.

B. The hearing officer shall only consider evidence that is relevant to whether the grounds for the denial, suspension or revocation are valid and supported by evidence.

C. The appellant shall be given the opportunity to testify and present witnesses and any relevant evidence concerning the charges set forth in the notice.

D. The formal rules of evidence shall not apply. All relevant evidence may be considered, and the hearing officer has the discretion to exclude evidence if he/she finds such evidence to be irrelevant or needlessly repetitive. The hearing officer has the authority to cut off presentation of evidence if he/she reasonably believes that the evidence being presented is irrelevant or needlessly repetitive.

E. 1. The failure of the appellant to appear at the appeal hearing shall constitute a forfeiture of the fine and shall be considered an admission that the alarm permit was properly denied, suspended or revoked.

2. Notwithstanding the above, upon a showing of good cause by the appellant, the hearing officer may excuse the appellant's failure to appear at the hearing and reschedule the hearing. Under no circumstances shall the hearing be rescheduled more than one (1) time.

F. The notice and any additional documents submitted by the peace officer shall constitute prima facie evidence of the respective facts contained in those documents.

G. At least ten (10) days prior to the hearing, the appellant shall be provided with copies of reports and any other documents submitted or relied upon by the chief of police. No other discovery disclosure is required.

H. The hearing officer may continue the hearing and request additional information from the chief of police or the appellant prior to issuing a written decision.

5.50.110 Hearing Officer's Decision.

A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to sustain or overrule the denial, suspension or revocation of the alarm permit and shall list in the decision the reasons for that decision. The decision of the hearing officer shall be final.

B. If the decision is to uphold the denial, suspension or revocation of the alarm permit, the City shall retain the fine deposited. If the decision is to overrule the denial, suspension or revocation, then the chief of police shall issue the alarm permit within a reasonable amount of time, but in no event no later than sixty (60) days after the service of the hearing officer's decision.

C. The time for a challenge to the hearing officer's decision in a court of law is governed by California Code of Civil Procedure Sections 1094.5 and 1094.6. Notice of the hearing officer's decision shall include citation to California Code of Civil Procedure Sections 1094.5 and 1094.6.

D. The hearing officer's written decision shall be served on the appellant within twenty (20) days from the date of the hearing by mailing to the appellant by certified mail, return receipt requested, via the U.S mail. Service of the hearing officer's decision shall be deemed to have been completed on the date of mailing.

5.50.120 Reinstatement of alarm permit.

A. An alarm user whose alarm permit has been suspended or revoked may be reissued a permit if the alarm user:

1. Submits an updated application and pays a permit fee as adopted by the city council by resolution; and

2. Pays, or otherwise resolves, all fines due the City for all past false alarms; and

3. Submits a written certification from an alarm company that complies with this chapter, stating that the alarm system has been inspected and where necessary, repaired.

B. If the permit is reinstated within one year of being revoked or suspended, any fines incurred for false alarms occurring during the 365 days following the date of the alarm permit reinstatement shall be double the fines set by city council resolution for false alarms. If the alarm user does not generate any false alarm calls for one year following the reinstatement of the permit, the fines for any subsequent false alarms shall revert to those set by resolution of the city council.

5.50.130 Violations.

A person, firm or corporation violating any provision of this chapter is guilty of a misdemeanor.

5.50.140 Limitation on liability of city.

The City is under no obligation or duty to any alarm user or any other person by reason of any provision of this chapter or the exercise of any privilege by any alarm user hereunder, including, but not limited to, any defects in a police or fire alarm system, any delay in transmission of an alarm message to any emergency unit or damage caused by delay in responding or failure to respond to any alarm by any City officer, employee or agent.

SECTION 2. Chapter 5.51 of Title 5 (Business Taxes, Licenses and Regulations) is hereby added as follows:

Chapter 5.51 Alarm Systems – False Alarms

5.51.010 Definitions.

The definitions of Section 5.50.010 shall apply to this Chapter.

5.51.020 Enforcement.

The chief of police shall have sole discretion to enforce the provisions of this chapter.

5.51.030 No permit responses -- Fines.

A. It is the sole responsibility of an alarm user to obtain an alarm permit prior to operating or maintaining an alarm system. If the alarm coordinator becomes aware that

an alarm user is operating or maintaining an alarm system without a permit, the alarm coordinator shall provide written notice to the alarm user regarding the requirement that the alarm user obtain an alarm permit within thirty (30) days.

B. An alarm user who operates or maintains an alarm system without a permit shall be subject to a fine, as adopted by city council resolution.

C. Each day that an alarm user operates or maintains an unpermitted alarm shall constitute a new and separate offense.

D. An unpermitted alarm user whose alarm system emits false alarms shall be subject to fines under this section as well as under Section 5.51.040.

5.51.040 False alarm notification and penalties.

A. An alarm user shall be subject to notification, warnings, fines and suspension or revocation of its alarm permit based on the number of false alarm responses emitting from an alarm system within a 365-day period, as set forth by city council resolution.

B. The fine shall revert to that issued for the first false alarm only after no false alarms are triggered within a continuous 365-period.

5.51.050 Request for Appeal Hearing.

A. Any alarm user may contest any fine under this chapter by submitting a written request to the chief of police for an appeal hearing, clearly stating the reasons for the appeal, within ten (10) days from the date of service of the fine, together with an advanced deposit of the fines. A hearing before the hearing officer shall be set for a date that is not less than fifteen (15), nor more than sixty (60) days from the date the Request for Hearing is filed. The person requesting the hearing (hereafter, the appellant) shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing.

5.51.060 Appeal Hearing Process.

A. No hearing to contest a fine before a hearing officer shall be held unless and until a written request for a hearing has been timely submitted and any applicable fines have been deposited.

B. The hearing officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the appellant is the person responsible for the alarm system.

C. The appellant shall be given the opportunity to testify and present witnesses and any relevant evidence concerning the circumstances that gave rise to the fine.

D. The formal rules of evidence shall not apply. All relevant evidence may be considered, and the hearing officer has the discretion to exclude evidence if he/she finds such evidence to be irrelevant or needlessly repetitive. The hearing officer has the authority to cut off presentation of evidence if he/she reasonably believes that the evidence being presented is irrelevant or needlessly repetitive.

E. 1. The failure of the appellant to appear at the appeal hearing shall constitute a forfeiture of the fine and shall be considered a concession that the fine was properly issued.

2. Notwithstanding the above, upon a showing of good cause by the appellant, the hearing officer may excuse the appellant's failure to appear at the hearing and reschedule the hearing. Under no circumstances shall the hearing be rescheduled more than one (1) time.

F. The fine and any additional documents submitted by the peace officer shall constitute prima facie evidence of the respective facts contained in those documents.

G. At least ten (10) days prior to the hearing, the appellant shall be provided with copies of the fine(s) assessed, reports, and other documents submitted or relied upon by the peace officer. No other discovery disclosure is required.

H. The hearing officer may continue the hearing and request additional information from the peace officer or the appellant prior to issuing a written decision.

5.51.070 Hearing Officer's Decision.

A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold, modify or revoke the fine amount, and shall list in the decision the reasons for that decision. The decision of the hearing officer shall be final.

B. If the decision is to uphold the penalty, the City shall retain the fine deposited. If the decision is to revoke or modify the penalty, then the City shall refund the partial or full fine deposit to the appellant within thirty (30) days of the service of the decision.

C. The time for a challenge to the hearing officer's decision in a court of law is governed by California Code of Civil Procedure Sections 1094.5 and 1094.6. Notice of the hearing officer's decision shall include citation to California Code of Civil Procedure Sections 1094.5 and 1094.6.

D. The hearing officer's written decision shall be served on the appellant within twenty (20) days from the date of the hearing by mailing to the appellant by certified mail, return receipt requested, via the U.S mail. Service of the hearing officer's decision shall be deemed to have been completed on the date of mailing.

SECTION 3. If any section, subsection, clause or phrase or portion of this code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of all other provisions of this ordinance.

The Mayor and City Council hereby declares that it would have passed the ordinance codified in this chapter, and each section, subsection, sentence, clause and phrase or portion thereof, irrespective of the fact that any one or more of the sections, subsections, sentences, clauses, or phrases or portions thereof be declared invalid or unconstitutional.

SECTION 4. The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published in the same manner required by law. This ordinance shall become effective thirty (30) days from and after its passage.

PASSED, APPROVED AND ADOPTED this 18 day of November 2009 by the following vote:

AYES:	COUNCIL MEMBERS:	RICE, TA, FRY, QUACH, DIEP
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE

Margie L. Rice

MARGIE L. RICE, MAYOR

ATTEST:

Robin Roberts

ROBIN ROBERTS, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF WESTMINSTER)

I, ROBIN ROBERTS, hereby certify that I am the duly appointed City Clerk of the City of Westminster and that the foregoing ordinance was introduced on the 14th day of October, 2009, and was adopted at an adjourned regular meeting thereof on the 18th day of November, 2009.

Robin Roberts

Robin Roberts
City Clerk