City of Las Cruces®

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Council Action and Executive Summary

Item # 9 **Ordinance/Resolution#** 2776

For Meeting of March 21, 2016 (Ordinance First Reading Date) **For Meeting of** April 4, 2016 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE TO REPEAL AND REPLACE, IN ITS ENTIRETY, CHAPTER 4 "ALARM SYSTEMS AND PRIVATE SECURITY FIRMS" OF THE LAS CRUCES MUNICIPAL CODE (LCMC), 1997, AS AMENDED.

PURPOSE(S) OF ACTION:

Repeal and replace alarm ordinance in the LCMC.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Ted Sweetser	**Department/Section:** Fire/Prevention	**Phone:** 528-4150
City Manager Signature:	Daniel Ortiz	

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Chapter 4 Sections 4-1 through 4-133 of the LCMC was enacted in August of 2013. Since adoption, the ordinance has been reviewed and evaluated by Las Cruces Police Department, Las Cruces Fire Department, Mesilla Valley Regional Dispatch Authority, and members of the local alarm industry. Upon implementation, it was discussed, that we would let the ordinance work for a period of time before making any further changes. It is now being brought forward to members of City Council to show that changes are needed to clarify intent and bring the ordinance in line with current operating standards. As such, the City Council is being requested to authorize an amendment to the LCMC as they are the governing body who has the authority to adopt changes to the LCMC.

During our review, the fee and fine section was also evaluated, and we are proposing to lower the registration fee for businesses to match that of residential owners, from $50 to $25. Approval of this revised ordinance will aid the City, alarm industry, and alarm users by clarifying matters and continuing to focus on reducing the number of false alarms that impact the resources available for other emergency calls.

SUPPORT INFORMATION:

1. Ordinance.

(Continue on additional sheets as required)

2. Exhibit "A", LCMC Chapter 4 "Alarm Systems and Private Security Firms"; Proposed.
3. Attachment "A", LCMC Chapter 4 "Alarm Systems and Private Security Firms"; current in legislative format.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*Budget Adjustment Attached*	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: ___in the amount of $_____for FY__.
	No	☒	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will repeal and replace Chapter 4 of the LCMC, adopting the more current language and fees.
2. Vote "No"; this will keep the existing Chapter 4 of the LCMC.
3. Vote to "Amend"; this could allow City Council to modify the ordinance as it deems appropriate.
4. Vote to "Table"; this could allow City Council to table/postpone the ordinance and direct staff accordingly.

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

COUNCIL BILL NO. 16-017
ORDINANCE NO. 2776

AN ORDINANCE TO REPEAL AND REPLACE, IN ITS ENTIRETY, CHAPTER 4 "ALARM SYSTEMS AND PRIVATE SECURITY FIRMS" OF THE LAS CRUCES MUNICIPAL CODE (LCMC), 1997, AS AMENDED.

The City Council is informed that:

WHEREAS, The City of Las Cruces (the City) Police and Fire Departments continue to respond to approximately 5000 alarms per year, 99% of which are false alarms; and

WHEREAS, responding to false alarms may endanger the public health, safety, and welfare of Las Cruces citizens by preventing, diverting, or delaying public safety resources from responding to legitimate calls for service; and

WHEREAS, false alarms unduly burden the limited public safety resources of the City and waste public taxpayers' money through unneeded public safety calls; and

WHEREAS, maintaining regulations which will promote the use of alarm systems in a manner which does not cause an undue number of false alarms is in the best interest of the City; and

WHEREAS, NMSA 1978, 3-17-1.B allows for the City to provide for the safety, to preserve the health and to improve the comfort and convenience of the municipality and its citizens.

NOW, THEREFORE, be it ordained by the governing body of the City of Las Cruces:

(I)

THAT the current LCMC, Chapter 4 "Alarm Systems and Private Security Firms" is repealed in its entirety.

(II)

THAT a new LCMC, Chapter 4 "Alarm Systems and Private Security Firms" is hereby enacted as shown in Exhibit "A", attached hereto and made part of this ordinance.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 20___

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: _____
Councillor Gandara: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Eakman: _____
Councillor Sorg: _____
Councillor Levatino: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

Exhibit "A"

Chapter 4

ALARM SYSTEMS AND PRIVATE SECURITY FIRMS*

* **Cross References:** Fire prevention and protection, ch. 11; false alarms, § 19-301; police, ch. 23.
State Law References: Municipal home rule, Const. art. X, § 6; NMSA 1978, § 3-15-13.

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ARTICLE I.
IN GENERAL

Sec. 4-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. ***Alarm Administrator*** means a person or persons designated by the City to administer, control and review false alarm reduction efforts and administers the provisions of this ordinance.
2. ***Alarm Company*** means a person subject to the licensing requirements, and/or a company engaged in selling, leasing, installing, servicing or monitoring alarm systems.
3. ***Alarm permit*** means a permit issued by the City allowing the operation of an alarm system within the City.
4. ***Alarm signal*** means a detectable signal; audible or visual, generated by an alarm system, to which law enforcement or fire department are requested to respond.
5. ***Alarm site*** means a single fixed commercial or private 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.
6. ***Alarm system*** means any single device or assembly of equipment designed to signal the occurrence of an illegal or unauthorized entry or other illegal activity requiring immediate attention and to which law enforcement is requested to respond, or designed to detect fire, smoke, carbon monoxide, or heat, domestic violence alarms, or alarms designed to elicit a medical response.
7. ***Alarm user*** means any person, corporation, partnership, proprietorship, governmental or educational entity or any other entity owning, leasing or operating an alarm system, or on whose premises an alarm system is maintained for the protection of such premises.
8. ***Alarm User Awareness Class*** means a class conducted for the purpose of educating alarm users about the responsible use, operation, and maintenance of alarm systems and the problems created by false alarms.
9. ***Automatic Dialing Device*** means any alarm system which automatically sends over telephone lines, radio or other communication system a prerecorded voice or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect.
10. ***Business Premises*** means any structure or area which is not defined in this section as a residential premises including, but not limited to, religious and not-for-profit organizations, hotels, motels and educational institutions.
11. ***Burglary Alarm*** means 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 or other techniques, and when activated, automatically transmits a telephone message, 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.

12. ***Cancellation*** means the process where response is terminated when the alarm company (designated by the alarm user) notifies MVRDA / Las Cruces Police or Fire Department that there is not an existing situation at the alarm site requiring Police or Fire response after an alarm dispatch request. If cancellation occurs prior to police arriving at the scene, this is not a false alarm for the purpose of civil/criminal penalty, and no penalty will be assessed.

13. ***Central station*** means that portion of an alarm system business which receives or intercepts a signal, indicating the activation of an alarm system, and which relays this information to the Police Department.

14. ***City*** means the City of Las Cruces or its agent.

15. ***Enhanced Call Verification (ECV)*** means a minimum of two attempts by the monitoring company, or its representative, to contact the alarm site and/or alarm user by telephone and/or other electronic means, whether or not actual contact with a person is made, to attempt to determine whether an alarm signal is valid before requesting law enforcement or fire department dispatch, in an attempt to avoid an unnecessary alarm dispatch request.

16. ***False alarm*** means the activation of any alarm system resulting in the notification of Police or Fire Department, for which the responding Pubic Safety Officer finds no evidence of criminal activity, fire, smoke, carbon monoxide, heat or other threat of emergency of the kind for which the Alarm System was designed to give notice.

17. ***Fire Alarm*** the giving, signaling or transgression to any public fire station, or company or to any officer or employee thereof, whether by telephone, spoken word or otherwise, of information to the effect that there is a fire at or near the place indicated by the person giving, signaling or transmitting such information. All occupancies that meet the requirements for a fire alarms system shall follow the adopted fire code for installation and maintenance of all alarms.

18. ***Hearing Officer*** means a hearing officer, as appointed by the district court. The hearing officer shall be a licensed member of the New Mexico Bar.

19. ***Medical alarm*** means a system designed to signal the presence of a hazard requiring urgent attention and to summon emergency medical response.

20. ***MVRDA*** means Mesilla Valley Regional Dispatch Authority.

21. ***Nuisance Alarm*** means more than 3 false alarms in a permit year, Fire alarms required and installed in accordance with the fire code adopted by the City of Las Cruces are exempt from becoming nuisance alarms.

22. ***Panic alarm*** means an audible alarm system signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring law enforcement response.

23. ***Permit year*** means the period starting from the date of issuance of a permit and ending twelve (12) months from the date of issuance.

24. ***Responsible party*** means an alarm system business, user or owner which is found by the police department to be responsible for an alarm system generating a false alarm.

25. ***Robbery Alarm*** means any system, device, or mechanism activated by an individual on or near the premises that alerts 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, and that meets the following criteria: The system is installed on real property (the "protected premises"); it is designed to be activated by an individual for the purpose of summoning assistance to the premises; it transmits a telephone message or emits an audible, visible, or electronic signal that can be heard, seen, or received by persons outside the protected premises; and is intended to summon police assistance to the premises.
26. ***Runaway alarm*** means an alarm system that produces repeated alarm signals that do not appear to be caused by separate human action. The Las Cruces Police or Fire Departments may, in its discretion, discontinue police responses to alarm signals from what appears to be a runaway alarm.
27. ***Residential Premises*** means any structure serving as a home or residence or is zoned for residential land use as defined by Chapter 38 of Las Cruces Land Development Code.
28. ***SIA Control Panel Standard CP-01*** means the American National Standard Institute (ANSI) approved Security Industry Association (SIA) CP-01 Control Panel Standard, as may be updated from time to time, that details recommended design features for security system control panels and their associated arming and disarming devices to reduce false alarms. Control panels built and tested to this standard by a nationally recognized testing organization, will be marked to state: "Design evaluated in accordance with SIA CP-01 Control Panel Standard Features for False Alarm Reduction".
29. ***Verified Response*** means on site verification of an alarm will be done by:
    - Responsible party or key holder
    - Witness who observes criminal activity
    - Private guard service
    - Remote video or audio verification of criminal activity

(Code 1988, § 4-1)
Cross References: Definitions generally, § 1-2.

Sec. 4-2. Exemptions.

This chapter shall not apply to the following:

1. An alarm system installed on a motor vehicle or a boat unless the alarm is connected to a central monitoring system.

(Code 1988, § 4-2)

Sec. 4-3. Prohibited Acts

1. It shall be unlawful to activate an alarm system, panic alarm or medical alarm for the purpose of summoning law enforcement or the fire department when no burglary, robbery, or other crime dangerous to life or property is being committed or attempted on the premises, when no indication of fire, smoke, carbon monoxide, heat exists, or otherwise to cause a false alarm. However, a person activating an alarm for the purpose

of testing the alarm shall take reasonable precautions to notify the Police or Fire Department or the owner of a business who maintains the alarm in a timely fashion to avoid emergency response.

2. It shall be unlawful to install, maintain, or use an audible alarm system which can sound continually for more than 10 minutes.
3. It shall be unlawful to install, maintain, or use an automatic dialing device that reports, or causes to be reported, any recorded message to the Las Cruces Police or Fire Department.
4. It shall be unlawful to use an alarm system to protect more than one licensed business or private residence without receiving a separate alarm permit for such business or private residence.
5. It shall be unlawful to operate or use any alarm system for which the registration or service response has been suspended or revoked.
6. It shall be unlawful for any alarm company to fail to make the required verification call(s) to the alarm site and/or alarm user prior to requesting an emergency response.
7. Violations of section 4-3 are subject to a fine of $100 per violation in addition to any other applicable fines.

(Code 1988, § 4-3)

Secs. 4-4.-4-30. Reserved.

ARTICLE II.
ALARMS

DIVISION 1.
GENERAL

Sec. 4-31. Alarm Permits

1. ***Permit required.*** No person shall use an alarm system without first obtaining a permit for such alarm system from the City. A fee is required for the initial registration and annual renewals. Each alarm permit shall be assigned a unique permit number, and the user may be required to provide the permit number along with the address. The fee for alarm permit registration and annual renewal will be $25.00 for residential alarms and $25.00 for business alarms. The alarm companies are responsible for collecting all initial permit fees and forwarding these fees to the City. Permit renewal fees will be collected by the City.
2. ***Application.*** The permit shall be requested on an application form provided by the City. An alarm user has the duty to obtain an application from the City.
3. ***Transfer of possession.*** When the possession of the premises at which an alarm system is maintained is transferred, the person (user) obtaining possession of the property shall file an application for an alarm permit within 30 days of obtaining possession of the property. Alarm permits are not transferable. Therefore, a new permit must be issued at $25.00 for residential and $25.00 for business.
4. ***Reporting updated information.*** Whenever the information provided on the alarm permit application changes, the alarm user shall provide correct information to the City or within 30 days of the change. The permit holder shall complete and return this form to the Alarm Company when any of the requested information has changed; failure to comply will constitute a violation and may result in a penalty or the customer being placed in a verified response status. In addition, each year after the issuance of the permit, permit holders will receive from the City a form requesting updated information which will be relayed to the City.
5. ***Multiple alarm systems.*** If an alarm user has one or more alarm systems protecting two or more separate structures having different addresses and/or tenants, a separate permit shall be required for each structure and/or tenant.
6. ***Apartment Complexes.*** For the purposes of enforcement this article against an individual residential unit, the tenant is responsible for false alarms emitted from the alarm system in the tenant's residential unit and each apartment shall be considered an alarm site.
7. ***Exemptions.*** Alarm systems which are not designed to summon public and/or Las Cruces Police or Fire Department attention, but which are privately monitored and responded to, are exempt from the permit requirement but are not exempt from other provisions of this ordinance. These alarm systems are subject to unregistered alarm system fees as defined is Section 4-34 unless the Alarm User voluntary elects to obtain a permit and the permit was valid at the time of the violation.

(Code 1988, § 4-16)

Sec. 4-32. Duties of the Alarm User

1. Maintain the premises and the alarm system in a method that will reduce or eliminate false alarms.
2. Must respond or cause a representative to respond to the alarm system's location within 15 minutes when notified by the Las Cruces Police or Fire Department.
3. Not manually activate an alarm for any reason other than an occurrence of an event that the alarm system was intended to report.
4. An alarm user must obtain a new permit and pay any associated fees if there is a change in physical location or ownership of a business or residence.
5. An alarm user shall renew on an annual basis so long as the alarm system is maintained for the protection of such premises. Failure to renew will result in the premises being placed into verified response until such fees are paid.

Sec. 4-33. Duties of the Alarm Company

1. Any person engaged in the alarm business in the City shall comply with the following:
   a. Obtain and maintain the required city license(s) and any other required license(s).
   b. Provide name, address, and telephone number of the user or a designee, who can be called in an emergency, 24 hours a day. This information shall be kept updated at MVRDA on a yearly basis for all current customers. All new customer information and changes must be added to list and forwarded to the City within 30 days of permit. A fine will be assessed in the amount of $10.00 per day after a 5-day grace period should the Alarm Company fail to submit this information by the dates as required.
   c. Provide all alarm users that are required to obtain a permit with an alarm permit application form.
   d. Collect all initial permit application forms and registration fees (made payable to the City) from their clients and forward these fees to the City within 30 days.
2. The alarm installation companies shall, on all new and up-graded installations, use only alarm control panel(s) which meet SIA Control Panel Standard CP-01.
3. Prior to activation of the alarm system, the alarm company must provide instructions explaining the proper operation of the alarm system to the alarm user.
4. Provide written information of how to obtain service from the alarm company for the alarm system.
5. An alarm company performing monitoring services shall:
   a. ***For Burglar Alarms:*** Use an Enhanced Call Verification process. Monitoring companies shall attempt to verify, by calling the alarm site and/or alarm user by telephone, to determine whether an alarm signal is valid before requesting dispatch. Telephone verification for burglary alarms shall require, as a minimum that a second call be made to a different number, if the first attempt fails to reach an alarm user who can properly identify themselves to attempt to determine whether an alarm signal is valid. This requirement does not apply to a panic, medical or robbery-in-progress

alarm, fire alarm or in cases where a crime-in-progress has been verified by visual, video and/or audible means.

b. ***For Fire Alarms:*** Shall attempt to verify the alarm by placing one call to the premises to determine if the alarm is valid or not. This process shall not take longer than 90 seconds.
c. Provide address and alarm user name and contact information to the MVRDA to facilitate dispatch and/or cancellations.
d. Communicate any available information about the location of the alarm.
e. Communicate a cancellation to the MVRDA as soon as possible following a determination that response is not needed.

(Code 1988, § 4-27)

Sec. 4-34. User Fees; False Alarms.

The following fees and fines shall be assessed, as applicable, to alarm users and alarm companies:

	ALARM USER	***ALARM COMPANY***
Fee-registration Residential New or Renewal or Transfer	$25.00	
Fee-registration Commercial New or Renewal or Transfer	$25.00	
Fee-Appeal	$50.00	
Fine-First False Alarm	$0	
Fine-Second False Alarm	$0	
Fine-Third False Alarms	$100.00	
Fine-Fourth False Alarms	$200.00	
Fine-Fifth False Alarms	$300.00	
Fine-Sixth and additional-False Alarms	$300.00 fine; may be placed in verified response	
Fine-false alarm for system in Verified Response status	$300.00	
Fine-Failure to Register	$100.00 per occurrence	
Fine-no background and/or fingerprint check		$200.00
Fine-no valid Alarm Business License		$100.00 per occurrence
License application		$50.00
Fine- Late Report for new registrations		$10.00 per day after 5-day grace period
Violations of section 4-3	$100.00 per occurrence	

1. ***Excessive false alarms***. It is hereby found and determined that three or more false alarms within a permit year is excessive, constitutes a public nuisance, and shall be unlawful. Civil penalties for false alarms within a permit year may be assessed against an alarm user as listed above. All nuisance alarms will be placed in a verified response status until penalties are paid and alarm system is fixed or alarm user shows proficiency in alarm use (30 days with no false alarms and successful completion of alarm user course).

2. ***Failure to register.*** Any person operating an unregistered alarm system or an unlicensed alarm company shall be subject to a $100.00 fine for each false alarm while the alarm

system is unregistered unless it is a fourth or subsequent false alarm for which the fine will be determined by the fine schedule in this section. The user will be placed in a verified response status until such penalty is paid in full. False alarm counts for unregistered alarms will be determined for the period of 12 months prior to the false alarm being assessed.

3. ***Payment of Penalty(ies).*** Penalty(ies) shall be paid within 30 days from the date of the invoice. The payment(s) will be made to the City directly. Once payment has been rendered a receipt will be issued and the City will remove the Alarm User or Alarm Company from a Verified Response status.

4. ***Verified Response Status.*** The failure of an Alarm User or Alarm Company to make payment of any penalty(ies) assessed under this ordinance within 45 days from the date of the invoice may result in Alarm User or Alarm Company being placed in verified response status until payment is received.

5. ***Civil Non-criminal violation.*** A violation of any of the provisions of this ordinance shall be a civil violation and shall not constitute a misdemeanor or infraction.

6. ***Panic alarm or medical alarm systems.*** The use of these alarms shall be exempted from the fees and/or penalties unless these alarm systems are used in an inappropriate or malicious way that summons law enforcement or the fire department for a response.

(Code 1988, § 4-28)

Sec. 4-35. Appeals

1. ***Appeals process.*** Assessments of penalty(ies) and other enforcement decisions made under this ordinance may be appealed by filing a written notice of appeal with the City within 10 consecutive days after the date of notification of the assessment of penalty(ies) or other enforcement decision. The failure to give notice of appeal within this time period shall constitute a waiver of the right to contest the assessment of penalty(ies) or other enforcement decision. Appeals shall be heard through an administrative process established by the City. The hearing officer is in charge of the proceedings and may exclude any person for inappropriate conduct. A certified copy of dispatch records is not hearsay and shall be admitted into evidence by the hearing officer. The respondent may challenge the weight or accuracy of the evidence. If the City prevails, the respondent shall pay the fine. The hearing officer shall render a decision in writing and provide the decision to the City. Failure to pay a fine as ordered by the hearing officer within ten consecutive days from the date of the decision is a default and will apply against the alarm holder or company without service of a notice of default. Following a hearing, the respondent may appeal the decision of the hearing officer, pursuant to Rule 1-074 of the Rules of Civil Procedure, to the Third Judicial District Court within 30 days of the decision and may recover the costs of filing the appeal if successful.

2. ***Appeal standard.*** The City has the burden to prove by a preponderance of the evidence that a false alarm occurred. The hearing officer shall review an appeal from the assessment of penalty(ies) or other enforcement decisions using a preponderance of the evidence standard. Notwithstanding a determination that the preponderance of the evidence supports the assessment of penalty(ies) or other enforcement decision, the

hearing officer shall have the discretion to dismiss or reduce penalty(ies) or reverse any other enforcement decision where warranted.

3. ***Appeal Fee.*** A $50.00 filing fee will be applied to any appeal process. An appeal fee must be filed with the written notice. The appeal fee will be refunded if the fine is waived.

4. ***Rebuttable Presumption.*** It is a rebuttable presumption that an alarm is false if personal responding from the Police or Fire Department do not discover any evidence of unauthorized entry, criminal activity, smoke, fire or other emergency following normal Police or Fire procedures in investigating the incident. The Alarm Administrator or public safety authority may adjust the count of false alarms and/or waive or reduce the penalty(ies) based on any of the following:

   a. Severe windstorms, electrical storms, tornadoes, floods, earthquakes or some other violent act of nature;
   b. Disruption of the telephone circuits beyond the control of the alarm user;
   c. Electrical power disruption or failure in excess of two hours;
   d. Malicious causes beyond the control of the alarm user.

The burden of showing that a false alarm was due to one of the following shall rest on the alarm user.

Sec. 4-36. Awareness Class

Alarm User Awareness Class. The class shall inform alarm users of the problems created by false alarms and instruct alarm users how to help reduce false alarms. This class will be made available through local alarm companies and/or through online sources. A certificate of successful completion will be required by the City to regain normal alarm response status and/or to waive a first time fine for false alarms.

Sec. 4-37. Penalty

1. ***Default.*** If the City does not receive payment of fines or request for a hearing within 45 consecutive days from the date of the invoice, the alarm user/alarm company is in default. Default automatically results in liability to the alarm user/alarm company and the alarm company/alarm user is barred from requesting or obtaining any hearing on the merits after the date of the default. The City shall mail the notice of default to the defaulting party. The notice of default shall inform the recipient that they have 20 consecutive days from the date of mailing of the notice to of default to pay the fine or request a hearing.

2. ***Relief.*** Nothing in this penalty section shall preclude the City from seeking any equitable relief including but not limited to an injunction. In the event any person or entity defaults on any obligation to pay a fee or fine under this Ordinance, the City may collect such unpaid amounts by any method provided by law including but not limited to attachment and foreclosure of a lien on the Alarm Site. In the event the City files an action in court to recover unpaid fee or fine, the City shall be entitled to recover its costs and attorney's fees in addition to the amount due.

3. ***Severability***. If any clause, sentence, paragraph, or part of this Ordinance, or the application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance nor the application of such clause, sentence, paragraph or part to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage

Secs. 4-38.-4-65. Reserved.

DIVISION 2.
LICENSE*

* **Cross References:** Business licenses, § 16-96 et seq.

Sec. 4-66. Required; application; investigation and fingerprints of applicant.

1. No person shall engage in the business of installing, monitoring, maintaining, servicing, repairing, altering, replacing, moving or causing to be installed in or on any building, place or premises abutting on or adjacent to a public street, alley or right of way, any device commonly known as a burglar alarm, fire alarm, holdup alarm or similar protection device or system without first having obtained a license issued by the City of Las Cruces Community Development Department (Community Development Department), and a valid license issued by the construction industries division of the regulation and licensing department of the State of New Mexico.
2. No person owning or employed in the business of installing, maintaining, servicing, repairing, altering, replacing, moving or responding to alarms shall be issued a license by Community Development Department the until a background investigation is conducted and such license is approved by the chief of police. A fine of $200.00 shall be assessed for each and every installation conducted in whole or in part by an employee who lacks the required Background Check, City Business License, and the proper state license.
3. All applications for licenses shall be submitted to the Community Development Department on forms provided by the City along with a valid government issued picture identification.
4. This section does not preclude any business from meeting any other requirements as prescribed within the business registration and licensing ordinance in effect at the time of application.

(Code 1988, § 4-26; Ord. No. 1669, § I, 4-6-98; Ord. No. 1713, § I, 1-4-99)

Sec. 4-67. Conditions for issuance.

All licenses required under this division are issued upon the following express conditions:

Every licensee shall always hold the City harmless from and on account of any and all damages arising out of the activities of such licensee, including but not limited to damages to the City, its agents, employees, invitees and licensees while in or on the police department building, and such damages shall expressly include those arising out of any difficulties in the alarm cabinet or the installation or maintenance thereof.

(Code 1988, § 4-29)

Sec. 4-68. Suspension, revocation.

1. If the City Manager has probable cause to believe that a person holding a license issued under this division has violated any section of this article or has made fraudulent, misrepresentative or false statements in the application for an alarm company license, the City Manager shall give the license holder due process in accordance with the general

license revocation procedures in section 16-97.

2. Any alarm business license may be suspended or revoked if the license holder has been found, following notice and hearing, to have violated any section of this article or has made any fraudulent, misrepresentative or false statements in the application for an alarm user license.
3. Any person whose alarm business license has been revoked shall not be permitted to apply for another alarm business license for one year after the order revoking the license, unless the City, upon petition by the licensee, finds that proper corrective measures have been taken.

(Code 1988, § 4-30)

Secs. 4-69.-4-95. Reserved.

ARTICLE III.
SECURITY SERVICES*

* **State Law References:** Private Investigators Act, NMSA 1978, § 61-27-1 et seq.

DIVISION 1.
GENERAL

Sec. 4-96. Additional employees.

A person holding a license under this article may employ persons who need not be licensed but whose names, places of residence and other personal data required in the license application shall promptly be reported to the chief of police. The chief of police shall carry out the same type of investigation provided for the applicant.

(Code 1988, § 4-41; Ord. No. 1669, § II, 4-6-98; Ord. No. 1713, § II, 1-4-99)

Sec. 4-97. Periodic reports.

All persons licensed under this article shall file monthly reports with the chief of police listing all public places within the City which they serve.

(Code 1988, § 4-42)

Secs. 4-98.-4-125. Reserved.

DIVISION 2.

LICENSE*

***Cross References:** Business licenses, § 16-96 et seq.

Sec. 4-126. Required.

Every person, before entering the business of conducting a merchant police firm, alarm system firm, civilian security agency or private detective agency, must first obtain from the City a license to do so. This license is in addition to the license referred to in article II of this chapter.

(Code 1988, § 4-51)

Sec. 4-127. Application.

Application for a license required by this division shall be in writing upon forms provided by the City and filed with the Community Development Department. A statement shall be required of the applicant as to details of the organization of his business and personal data on all principals of the business.

(Code 1988, § 4-52)

Sec. 4-128. Fee.

Fee(s) shall be paid in accordance with chapter 16, article IV, division 3 of this Code.

(Code 1988, § 4-53; Ord. No. 1713, § III, 1-4-99)

Sec. 4-129. Investigation.

The Community Development Department shall transmit all applications for licenses required by this division to the chief of police who shall conduct a statewide background check to determine the fitness to perform the functions of the business in which they seek to engage. The investigation shall determine whether an applicant and/or additional employee(s):

1. Is of good moral character;
2. Is at least eighteen years of age;
3. Has not been convicted of a felony offense or any other criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

(Code 1988, § 4-54; Ord. No. 1713, § IV, 1-4-99)

Sec. 4-130. Approval; Disapproval.

Upon approval of the chief of police, the Community Development Department shall issue to the applicant the license required by this division. Upon the disapproval by the chief of police, the license shall not be issued and the fee for the license shall be refunded to the applicant. Upon disapproval by the chief of police, any affected party, applicant or employee may file an appeal to the City Council to overturn the chief of police's decision. The appeal must be filed with the Community Development Department within ten consecutive days of notification to the applicant that the application has been disapproved. The decision of the City Council shall be final in all cases.

(Code 1988, § 4-55; Ord. No. 1713, § V, 1-4-99)

Sec. 4-131. Bond required.

Before the license provided for by this division may be issued, the applicant shall file a surety bond in the sum of $2,500.00 executed by a company authorized to do business in the state on the condition that the applicant or any of his employees will not, in connection with their performance under the license granted by the City, violate any state or federal law or ordinance of the City involving moral turpitude. Such bond will be for the protection of the City and of any person damaged by a breach of the condition of the bond. However, if evidence of a state bond in a like amount is shown, another bond shall not be required by the City.

(Code 1988, § 4-56)

Sec. 4-132. Renewal.

A license issued under this division shall be subject to approval in the same manner as an original application. Statements concerning the details of the organization need not be provided annually, provided that changes in business and personal data be submitted to the police department as such changes occur.

(Code 1988, § 4-57; Ord. No. 1713, § VI, 1-4-99)

Sec. 4-133. Suspension, Revocation.

Any license issued under this division may be suspended or revoked by the chief of police for the violation by the licensee of any applicable section of this Code, state law or city ordinance, rule or regulation in accordance with the general license revocation procedures in section 16-97. If the license is revoked, the licensee shall not be entitled to a return of the license fee.

(Code 1988, § 4-58; Ord. No. 1669, § III, 4-6-98; Ord. No. 1713, § VII, 1-4-99)

Chapter 4

ALARM SYSTEMS AND PRIVATE SECURITY FIRMS*

* **Cross References:** Fire prevention and protection, ch. 11; false alarms, § 19-301; police, ch. 23.
State Law References: Municipal home rule, Const. art. X, § 6; NMSA 1978, § 3-15-13.

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ARTICLE I.
IN GENERAL

Sec. 4-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. ***Alarm Administrator*** means a person or persons designated by the City to administer, control and review false alarm reduction efforts and administers the provisions of this ordinance.
2. ***Alarm Company*** means a person subject to the licensing requirements, and/or a company engaged in selling, leasing, installing, servicing or monitoring alarm systems.
3. ***Alarm permit*** means a permit issued by the City allowing the operation of an alarm system within the City.
4. ***Alarm signal*** means a detectable signal; audible or visual, generated by an alarm system, to which law enforcement or fire department are requested to respond.
5. ***Alarm site*** means a single fixed commercial or private 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.
6. ***Alarm system*** means any single device or assembly of equipment designed to signal the occurrence of an illegal or unauthorized entry or other illegal activity requiring immediate attention and to which law enforcement is requested to respond, or designed to detect fire, smoke, carbon monoxide, or heat, domestic violence alarms, or alarms designed to elicit a medical response.
7. ***Alarm user*** means any person, corporation, partnership, proprietorship, governmental or educational entity or any other entity owning, leasing or operating an alarm system, or on whose premises an alarm system is maintained for the protection of such premises.
8. ***Alarm User Awareness Class*** means a class conducted for the purpose of educating alarm users about the responsible use, operation, and maintenance of alarm systems and the problems created by false alarms.
9. ***Automatic Dialing Device*** means any alarm system which automatically sends over telephone lines, radio or other communication system a prerecorded voice or coded signal indicating the existence of the emergency situation that the alarm system is designed to detect.
10. ***Business Premises*** means any structure or area which is not defined in this section as a residential premises including, but not limited to, religious and not-for-profit organizations, hotels, motels and educational institutions.
11. ***Burglary Alarm*** means 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 or other techniques, and when activated, automatically transmits a telephone message, 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.

12. ***Cancellation*** means the process where response is terminated when the alarm company (designated by the alarm user) notifies MVRDA / Las Cruces Police or Fire Department that there is not an existing situation at the alarm site requiring Police or Fire response after an alarm dispatch request. If cancellation occurs prior to police arriving at the scene, this is not a false alarm for the purpose of civil/criminal penalty, and no penalty will be assessed.

13. ***Central station*** means that portion of an alarm system business which receives or intercepts a signal, indicating the activation of an alarm system, and which relays this information to the Police Department.

14. ***City*** means the City of Las Cruces or its agent.

15. ***Enhanced Call Verification (ECV)*** means a minimum of two attempts by the monitoring company, or its representative, to contact the alarm site and/or alarm user by telephone and/or other electronic means, whether or not actual contact with a person is made, to attempt to determine whether an alarm signal is valid before requesting law enforcement or fire department dispatch, in an attempt to avoid an unnecessary alarm dispatch request.

16. ***False alarm*** means the activation of any alarm system resulting in the notification of Police or Fire Department, for which the responding Pubic Safety Officer finds no evidence of criminal activity, fire, smoke, carbon monoxide, heat or other threat of emergency of the kind for which the Alarm System was designed to give notice.

17. ***Fire Alarm*** the giving, signaling or transgression to any public fire station, or company or to any officer or employee thereof, whether by telephone, spoken word or otherwise, of information to the effect that there is a fire at or near the place indicated by the person giving, signaling or transmitting such information. All occupancies that meet the requirements for a fire alarms system shall follow the adopted fire code for installation and maintenance of all alarms.

18. ***Hearing Officer*** means a hearing officer, as appointed by the district court. The hearing officer shall be a licensed member of the New Mexico Bar.

19. ***Medical alarm*** means a system designed to signal the presence of a hazard requiring urgent attention and to summon emergency medical response.

20. ***MVRDA*** means Mesilla Valley Regional Dispatch Authority.

21. ***Nuisance Alarm*** means more than 3 false alarms in a permit year, Fire alarms required and installed in accordance with the fire code adopted by the City of Las Cruces are exempt from becoming nuisance alarms.

22. ***Panic alarm*** means an audible alarm system signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring law enforcement response.

23. ***Permit year*** means the period starting from the date of issuance of a permit and ending twelve (12) months from the date of issuance.

24. ***Responsible party*** means an alarm system business, user or owner which is found by the police department to be responsible for an alarm system generating a false alarm.

25. ***Robbery Alarm*** means any system, device, or mechanism activated by an individual on or near the premises that alerts 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, and that meets the following criteria: The system is installed on real property (the "protected premises"); it is designed to be activated by an individual for the purpose of summoning assistance to the premises; it transmits a telephone message or emits an audible, visible, or electronic signal that can be heard, seen, or received by persons outside the protected premises; and is intended to summon police assistance to the premises.

26. ***Runaway alarm*** means an alarm system that produces repeated alarm signals that do not appear to be caused by separate human action. The Las Cruces Police or Fire Departments may, in its discretion, discontinue police responses to alarm signals from what appears to be a runaway alarm.

27. ***Residential Premises*** means any structure serving as a home or residence or is zoned for residential land use as defined by Chapter 38 of Las Cruces Land Development Code.

28. ***SIA Control Panel Standard CP-01*** means the American National Standard Institute (ANSI) approved Security Industry Association (SIA) CP-01 Control Panel Standard, as may be updated from time to time, that details recommended design features for security system control panels and their associated arming and disarming devices to reduce false alarms. Control panels built and tested to this standard by a nationally recognized testing organization, will be marked to state: "Design evaluated in accordance with SIA CP-01 Control Panel Standard Features for False Alarm Reduction".

29. ***Verified Response*** means on site verification of an alarm will be done by:

    - Responsible party or key holder
    - Witness who observes criminal activity
    - Private guard service
    - Remote video or audio verification of criminal activity

(Code 1988, § 4-1)
Cross References: Definitions generally, § 1-2.

Sec. 4-2. Exemptions.

This chapter shall not apply to the following:

1. An alarm system installed on a motor vehicle or a boat unless the alarm is connected to a central monitoring system.
2. ~~Any medical alarm or panic alarm or other exemptions provided by law.~~

(Code 1988, § 4-2)

Sec. 4-3. Prohibited Acts

1. It shall be unlawful to activate an alarm system, panic alarm or medical alarm for the purpose of summoning law enforcement or the fire department when no burglary, robbery, or other crime dangerous to life or property is being committed or attempted on the premises, when no indication of fire, smoke, carbon monoxide, heat exists, or

otherwise to cause a false alarm. However, a person activating an alarm for the purpose of testing the alarm shall take reasonable precautions to notify the Police or Fire Department or the owner of a business who maintains the alarm in a timely fashion to avoid emergency response.

2. It shall be unlawful to install, maintain, or use an audible alarm system which can sound continually for more than 10 minutes.
3. It shall be unlawful to install, maintain, or use an automatic dialing device that reports, or causes to be reported, any recorded message to the Las Cruces Police or Fire Department.
4. It shall be unlawful to use an alarm system to protect more than one licensed business or private residence without receiving a separate alarm permit for such business or private residence.
5. It shall be unlawful to operate or use any alarm system for which the registration or service response has been suspended or revoked.
6. It shall be unlawful for any alarm company to fail to make the required verification call(s) to the alarm site and/or alarm user prior to requesting an emergency response.
7. ~~It shall be unlawful to operate a robbery or panic alarm or medical alarm system for any purpose other than reporting robberies or other crimes involving potential serious bodily injury or death.~~
8. Violations of section 4-3 are subject to a fine of $100 per violation in addition to any other applicable fines.

(Code 1988, § 4-3)

Secs. 4-4.-4-30. Reserved.

ARTICLE II.
ALARMS

DIVISION 1.
GENERAL

Sec. 4-31. Alarm Permits

1. ***Permit required.*** No person shall use an alarm system without first obtaining a permit for such alarm system from the City. A fee is required for the initial registration and annual renewals. Each alarm permit shall be assigned a unique permit number, and the user may be required to provide the permit number along with the address. The fee for alarm permit registration and annual renewal will be ~~$50.00~~ $25.00 for residential alarms and $25.00 for business alarms. The alarm companies are responsible for collecting all initial permit fees and forwarding these fees to the City. Permit renewal fees will be collected by the City.

2. ***Application.*** The permit shall be requested on an application form provided by the City. An alarm user has the duty to obtain an application from the City.

3. ***Transfer of possession.*** When the possession of the premises at which an alarm system is maintained is transferred, the person (user) obtaining possession of the property shall file an application for an alarm permit within 30 days of obtaining possession of the property. Alarm permits are not transferable. Therefore, a new permit must be issued at $25.00 for residential and ~~$50.00~~ $25.00 for business.

4. ***Reporting updated information.*** Whenever the information provided on the alarm permit application changes, the alarm user shall provide correct information to the City or within 30 days of the change. The permit holder shall complete and return this form to the Alarm Company when any of the requested information has changed; failure to comply will constitute a violation and may result in a penalty or the customer being placed in a verified response status. In addition, each year after the issuance of the permit, permit holders will receive from the City a form requesting updated information which will be relayed to the City.

5. ***Multiple alarm systems.*** If an alarm user has one or more alarm systems protecting two or more separate structures having different addresses and/or tenants, a separate permit shall be required for each structure and/or tenant.

6. ***Apartment Complexes.*** For the purposes of enforcement this article against an individual residential unit, the tenant is responsible for false alarms emitted from the alarm system in the tenant's residential unit and each apartment shall be considered an alarm site.

7. ***Exemptions.*** Alarm systems which are not designed to summon public and/or Las Cruces Police or Fire Department attention, but which are privately monitored and responded to, are exempt from the permit requirement but are not exempt from other provisions of this ordinance. These alarm systems are subject to unregistered alarm system fees as defined is Section 4-34 unless the Alarm User voluntary elects to obtain a permit and the permit was valid at the time of the violation.

(Code 1988, § 4-16)

Sec. 4-32. Duties of the Alarm User

1. Maintain the premises and the alarm system in a method that will reduce or eliminate false alarms.
2. Must respond or cause a representative to respond to the alarm system's location within 15 minutes when notified by the Las Cruces Police or Fire Department.
3. Not manually activate an alarm for any reason other than an occurrence of an event that the alarm system was intended to report.
4. An alarm user must obtain a new permit and pay any associated fees if there is a change in physical location or ownership of a business or residence.
5. An alarm user shall renew on an annual basis so long as the alarm system is maintained for the protection of such premises. Failure to renew will result in the premises being placed into verified response until such fees are paid.

Sec. 4-33. Duties of the Alarm Company

1. Any person engaged in the alarm business in the City shall comply with the following:
   a. Obtain and maintain the required city license(s) and any other required license(s).
   b. Provide name, address, and telephone number of the user or a designee, who can be called in an emergency, 24 hours a day. This information shall be kept updated at MVRDA on a yearly basis for all current customers. All new customer information and changes must be added to list and forwarded to the City within 30 days of permit. A fine will be assessed in the amount of $10.00 per day after a 5-day grace period should the Alarm Company fail to submit this information by the dates as required.
   c. Provide all alarm users that are required to obtain a permit with an alarm permit application form.
   d. Collect all initial permit application forms and registration fees (made payable to the City) from their clients and forward these fees to the City within 30 days.
2. ~~Ninety days after enactment of this chapter~~ The alarm installation companies shall, on all new and up-graded installations, use only alarm control panel(s) which meet SIA Control Panel Standard CP-01.
3. Prior to activation of the alarm system, the alarm company must provide instructions explaining the proper operation of the alarm system to the alarm user.
4. Provide written information of how to obtain service from the alarm company for the alarm system.
5. An alarm company performing monitoring services shall:
   a. ***For Burglar Alarms:*** Use an Enhanced Call Verification process. Monitoring companies shall attempt to verify, by calling the alarm site and/or alarm user by telephone, to determine whether an alarm signal is valid before requesting dispatch. Telephone verification for burglary alarms shall require, as a minimum that a second call be made to a different number, if the first attempt fails to reach an alarm user who can properly identify themselves to attempt to determine whether an alarm signal is valid. This requirement does not apply to a panic, medical or robbery-in-progress

alarm, fire alarm or in cases where a crime-in-progress has been verified by visual, video and/or audible means.

b. ***For Fire Alarms:*** Shall attempt to verify the alarm by placing one call to the premises to determine if the alarm is valid or not. This process shall not take longer than 90 seconds.
c. Provide address and alarm user name and contact information to the MVRDA to facilitate dispatch and/or cancellations.
d. Communicate any available information about the location of the alarm.
e. Communicate a cancellation to the MVRDA as soon as possible following a determination that response is not needed.

(Code 1988, § 4-27)

Sec. 4-34. User Fees; False Alarms.

The following fees and fines shall be assessed, as applicable, to alarm users and alarm companies:

	ALARM USER	***ALARM COMPANY***
Fee-registration Residential New or Renewal or Transfer	$25.00	
Fee-registration Commercial New or Renewal or Transfer	~~$50.00~~ $25.00	
Fee-Appeal	$50.00	
Fine-First False Alarm	$0	
Fine-Second False Alarm	$0	
Fine-Third False Alarms	$100.00	
Fine-Fourth False Alarms	$200.00	
Fine-Fifth False Alarms	$300.00	
Fine-Sixth and additional-False Alarms	$300.00 fine; may be placed in verified response	
Fine-false alarm for system in Verified Response status	$300.00	
Fine-Failure to Register	$100.00 per occurrence	
Fine-no background and/or fingerprint check		$200.00
Fine-no valid Alarm Business License		$100.00 per occurrence
License application		$50.00
Fine- Late Report for new registrations		$10.00 per day after 5-day grace period
Violations of section 4-3	$100.00 per occurrence	

1. ***Excessive false alarms.*** It is hereby found and determined that three or more false alarms within a permit year is excessive, constitutes a public nuisance, and shall be unlawful. Civil penalties for false alarms within a permit year may be assessed against an alarm user as listed above. All nuisance alarms will be placed in a verified response status until penalties are paid and alarm system is fixed or alarm user shows proficiency in alarm use (30 days with no false alarms and successful completion of alarm user course).

2. ***Failure to register.*** Any person operating an unregistered alarm system or an unlicensed alarm company shall be subject to a $100.00 fine for each false alarm while the alarm

system is unregistered unless it is a fourth or subsequent false alarm for which the fine will be determined by the fine schedule in this section. The user will be placed in a verified response status until such penalty is paid in full. False alarm counts for unregistered alarms will be determined for the period of 12 months prior to the false alarm being assessed.

3. ***Payment of Penalty(ies).*** Penalty(ies) shall be paid within 30 days from the date of the invoice. The payment(s) will be made to the City directly. Once payment has been rendered a receipt will be issued and the City will remove the Alarm User or Alarm Company from a Verified Response status.

4. ***Verified Response Status.*** The failure of an Alarm User or Alarm Company to make payment of any penalty(ies) assessed under this ordinance within 45 days from the date of the invoice may result in Alarm User or Alarm Company being placed in verified response status until payment is received.

5. ***Civil Non-criminal violation.*** A violation of any of the provisions of this ordinance shall be a civil violation and shall not constitute a misdemeanor or infraction.

6. ***Panic alarm or medical alarm systems.*** The use of these alarms shall be exempted from the fees and/or penalties unless these alarm systems are used in an inappropriate or malicious way that summons law enforcement or the fire department for a response.

(Code 1988, § 4-28)

Sec. 4-35. Appeals

1. ***Appeals process.*** Assessments of penalty(ies) and other enforcement decisions made under this ordinance may be appealed by filing a written notice of appeal with the City within 10 consecutive days after the date of notification of the assessment of penalty(ies) or other enforcement decision. The failure to give notice of appeal within this time period shall constitute a waiver of the right to contest the assessment of penalty(ies) or other enforcement decision. Appeals shall be heard through an administrative process established by the City. The hearing officer is in charge of the proceedings and may exclude any person for inappropriate conduct. A certified copy of dispatch records is not hearsay and shall be admitted into evidence by the hearing officer. The respondent may challenge the weight or accuracy of the evidence. If the City prevails, the respondent shall pay the fine. The hearing officer shall render a decision in writing and provide the decision to the City. Failure to pay a fine as ordered by the hearing officer within ten consecutive days from the date of the decision is a default and will apply against the alarm holder or company without service of a notice of default. Following a hearing, the respondent may appeal the decision of the hearing officer, pursuant to Rule 1-074 of the Rules of Civil Procedure, to the Third Judicial District Court within 30 days of the decision and may recover the costs of filing the appeal if successful.

2. ***Appeal standard.*** The City has the burden to prove by a preponderance of the evidence that a false alarm occurred. The hearing officer shall review an appeal from the assessment of penalty(ies) or other enforcement decisions using a preponderance of the evidence standard. Notwithstanding a determination that the preponderance of the evidence supports the assessment of penalty(ies) or other enforcement decision, the

hearing officer shall have the discretion to dismiss or reduce penalty(ies) or reverse any other enforcement decision where warranted.

3. ***Appeal Fee.*** A $50.00 filing fee will be applied to any appeal process. An appeal fee must be filed with the written notice. The appeal fee will be refunded if the fine is waived.

4. ***Rebuttable Presumption.*** It is a rebuttable presumption that an alarm is false if personal responding from the Police or Fire Department do not discover any evidence of unauthorized entry, criminal activity, smoke, fire or other emergency following normal Police or Fire procedures in investigating the incident. The Alarm Administrator or public safety authority may adjust the count of false alarms and/or waive or reduce the penalty(ies) based on any of the following:

   a. Severe windstorms, electrical storms, tornadoes, floods, earthquakes or some other violent act of nature;
   b. Disruption of the telephone circuits beyond the control of the alarm user;
   c. Electrical power disruption or failure in excess of two hours;
   d. Malicious causes beyond the control of the alarm user.

The burden of showing that a false alarm was due to one of the following shall rest on the alarm user.

Sec. 4-36. Awareness Class

Alarm User Awareness Class. The class shall inform alarm users of the problems created by false alarms and instruct alarm users how to help reduce false alarms. This class will be made available through local alarm companies and/or through online sources. A certificate of successful completion will be required by the City to regain normal alarm response status and/or to waive a first time fine for false alarms.

Sec. 4-37. Penalty

1. ***Default.*** If the City does not receive payment of fines or request for a hearing within 45 consecutive days from the date of the invoice, the alarm user/alarm company is in default. Default automatically results in liability to the alarm user/alarm company and the alarm company/alarm user is barred from requesting or obtaining any hearing on the merits after the date of the default. The City shall mail the notice of default to the defaulting party. The notice of default shall inform the recipient that they have 20 consecutive days from the date of mailing of the notice to of default to pay the fine or request a hearing.

2. ***Relief.*** Nothing in this penalty section shall preclude the City from seeking any equitable relief including but not limited to an injunction. In the event any person or entity defaults on any obligation to pay a fee or fine under this Ordinance, the City may collect such unpaid amounts by any method provided by law including but not limited to attachment and foreclosure of a lien on the Alarm Site. In the event the City files an action in court to recover unpaid fee or fine, the City shall be entitled to recover its costs and attorney's fees in addition to the amount due.

3. ~~***Grace period.*** Upon the effective date of the ordinance from which this chapter derives, alarm users shall have a grace period to procure an alarm user permit. During the grace period, no fine for operation of an alarm system without an alarm user permit shall be charged; providing that, after this grace period expires, alarm users shall be subject to the penalties provided in this chapter. Upon the effective date of this chapter, alarm companies shall have a grace period of 90 days to procure an alarm business license. During this time, no fine for operation of an alarm company and valid alarm business license shall be charged.~~

4. ***Severability***. If any clause, sentence, paragraph, or part of this Ordinance, or the application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance nor the application of such clause, sentence, paragraph or part to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage

Secs. 4-38.-4-65. Reserved.

DIVISION 2.
LICENSE*

* **Cross References:** Business licenses, § 16-96 et seq.

Sec. 4-66. Required; application; investigation and fingerprints of applicant.

1. No person shall engage in the business of installing, monitoring, maintaining, servicing, repairing, altering, replacing, moving or causing to be installed in or on any building, place or premises abutting on or adjacent to a public street, alley or right of way, any device commonly known as a burglar alarm, fire alarm, holdup alarm or similar protection device or system without first having obtained a license issued by the City of Las Cruces Community Development Department (Community Development Department), and a valid license issued by the construction industries division of the regulation and licensing department of the State of New Mexico.
2. No person owning or employed in the business of installing, maintaining, servicing, repairing, altering, replacing, moving or responding to alarms shall be issued a license by the Community Development Department until ~~fingerprints are obtained and~~ a background investigation is conducted and such license is approved by the chief of police. ~~All criminal histories, fingerprints, and background investigations shall be retained by the chief of police.~~ A fine of $200.00 shall be assessed for each and every installation conducted in whole or in part by an employee who lacks the required Background Check, ~~Fingerprinting,~~ City Business License, and the proper state license.
3. All applications for licenses shall be submitted to the ~~city clerk~~ Community Development Department on forms provided by the City along with a valid government issued picture identification.
4. This section does not preclude any business from meeting any other requirements as prescribed within the business registration and licensing ordinance in effect at the time of application.

(Code 1988, § 4-26; Ord. No. 1669, § I, 4-6-98; Ord. No. 1713, § I, 1-4-99)

Sec. 4-67. Conditions for issuance.

All licenses required under this division are issued upon the following express conditions:

Every licensee shall always hold the City harmless from and on account of any and all damages arising out of the activities of such licensee, including but not limited to damages to the City, its agents, employees, invitees and licensees while in or on the police department building, and such damages shall expressly include those arising out of any difficulties in the alarm cabinet or the installation or maintenance thereof.

(Code 1988, § 4-29)

Sec. 4-68. Suspension, revocation.

1. If the City Manager has probable cause to believe that a person holding a license issued under this division has violated any section of this article or has made fraudulent,

misrepresentative or false statements in the application for an alarm company license, the City Manager shall give the license holder due process in accordance with the general license revocation procedures in section 16-97.

2. Any alarm business license may be suspended or revoked if the license holder has been found, following notice and hearing, to have violated any section of this article or has made any fraudulent, misrepresentative or false statements in the application for an alarm user license.
3. Any person whose alarm business license has been revoked shall not be permitted to apply for another alarm business license for one year after the order revoking the license, unless the City, upon petition by the licensee, finds that proper corrective measures have been taken.

(Code 1988, § 4-30)

Secs. 4-69.-4-95. Reserved.

ARTICLE III.
SECURITY SERVICES*

* **State Law References:** Private Investigators Act, NMSA 1978, § 61-27-1 et seq.

DIVISION 1.
GENERAL

Sec. 4-96. Additional employees.

A person holding a license under this article may employ persons who need not be licensed but whose names, places of residence and other personal data required in the license application shall promptly be reported to the chief of police. The chief of police shall ~~cause the fingerprints of such additional employees to be taken and shall~~ carry out the same type of investigation provided for the applicant.

(Code 1988, § 4-41; Ord. No. 1669, § II, 4-6-98; Ord. No. 1713, § II, 1-4-99)

Sec. 4-97. Periodic reports.

All persons licensed under this article shall file monthly reports with the chief of police listing all public places within the City which they serve.

(Code 1988, § 4-42)

Secs. 4-98.-4-125. Reserved.

DIVISION 2.

LICENSE*

*Cross References: Business licenses, § 16-96 et seq.

Sec. 4-126. Required.

Every person, before entering the business of conducting a merchant police firm, alarm system firm, civilian security agency or private detective agency, must first obtain from the City a license to do so. This license is in addition to the license referred to in article II of this chapter.

(Code 1988, § 4-51)

Sec. 4-127. Application.

Application for a license required by this division shall be in writing upon forms provided by the City and filed with the ~~city clerk~~ Community Development Department. A statement shall be required of the applicant as to details of the organization of his business and personal data on all principals of the business.

(Code 1988, § 4-52)

Sec. 4-128. Fee.

Fee(s) shall be paid in accordance with chapter 16, article IV, division 3 of this Code.

(Code 1988, § 4-53; Ord. No. 1713, § III, 1-4-99)

Sec. 4-129. Investigation.

The ~~city clerk~~ Community Development Department shall transmit all applications for licenses required by this division to the chief of police who shall ~~cause the fingerprints of all applicants to be taken and shall~~ conduct a statewide background check to determine the fitness to perform the functions of the business in which they seek to engage. The investigation shall determine whether an applicant and/or additional employee(s):

1. Is of good moral character;
2. Is at least eighteen years of age;
3. Has not been convicted of a felony offense or any other criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

(Code 1988, § 4-54; Ord. No. 1713, § IV, 1-4-99)

Sec. 4-130. Approval; Disapproval.

Upon approval of the chief of police, ~~the city clerk~~ the Community Development Department shall issue to the applicant the license required by this division. Upon the disapproval by the chief of police, the license shall not be issued and the fee for the license shall be refunded to the applicant. Upon disapproval by the chief of police, any affected party, applicant or employee may file an appeal to the City Council to overturn the chief of police's decision. The appeal must

be filed with the ~~city clerk~~ Community Development Department within ten consecutive days of notification to the applicant that the application has been disapproved. The decision of the City Council shall be final in all cases.

(Code 1988, § 4-55; Ord. No. 1713, § V, 1-4-99)

Sec. 4-131. Bond required.

Before the license provided for by this division may be issued, the applicant shall file a surety bond in the sum of $2,500.00 executed by a company authorized to do business in the state on the condition that the applicant or any of his employees will not, in connection with their performance under the license granted by the City, violate any state or federal law or ordinance of the City involving moral turpitude. Such bond will be for the protection of the City and of any person damaged by a breach of the condition of the bond. However, if evidence of a state bond in a like amount is shown, another bond shall not be required by the City.

(Code 1988, § 4-56)

Sec. 4-132. Renewal.

A license issued under this division shall be subject to approval in the same manner as an original application. Statements concerning the details of the organization need not be provided annually, provided that changes in business and personal data be submitted to the police department as such changes occur.

(Code 1988, § 4-57; Ord. No. 1713, § VI, 1-4-99)

Sec. 4-133. Suspension, Revocation.

Any license issued under this division may be suspended or revoked by the chief of police for the violation by the licensee of any applicable section of this Code, state law or city ordinance, rule or regulation in accordance with the general license revocation procedures in section 16-97. If the license is revoked, the licensee shall not be entitled to a return of the license fee.

(Code 1988, § 4-58; Ord. No. 1669, § III, 4-6-98; Ord. No. 1713, § VII, 1-4-99)

(7)

City of Las Cruces®
PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of March 21, 2016 (Ordinance First Reading Date)

For Meeting of April 4, 2016 (Adoption Date)

TITLE: AN ORDINANCE TO REPEAL AND REPLACE, IN ITS ENTIRETY, CHAPTER 4 "ALARM SYSTEMS AND PRIVATE SECURITY FIRMS" OF THE LAS CRUCES MUNICIPAL CODE (LCMC), 1997, AS AMENDED.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes ☐ No ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	Ted Sweetser	528-3473	2/29/16
Department Director	Travis A. Brown	528-3473	3/1/2016
Other			
Assistant City Manager /CAO Management & Budget Manager	[illegible]	541-2078 541-2077	3/4/2016 3-2-2016
Assistant City Manager/COO	Daniel Ortega		3/4/16
City Attorney	[illegible]	EXT 2128	8 MAR 2016
City Clerk	[illegible]	X2115	3-10-16

Rev. 8/2011