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ORDINANCE NUMBER O-_____ 20097 _____ (NEW SERIES)

DATE OF FINAL PASSAGE OCT 3 2011

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 5 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 51 TITLED "FIRE AND HARMFUL GAS EMERGENCY ALARMS" AND BY ADDING SECTIONS 55.5101, 55.5102, 55.5103, 55.5104, 55.5105, 55.5106, 55.5107, 55.5108 55.5109, 55.5110, 55.5111, 55.5112, 55.5113, 55.5114, 55.5115, 55.5116, 55.5117, 55.5118, 55.5119, 55.5120, 55.5121, 55.5122 AND 55.5123, ALL RELATED TO FIRE AND HARMFUL GAS EMERGENCY ALARMS

WHEREAS, the San Diego Fire-Rescue Department (SDFD) responds to thousands of calls due to false emergency alarms each year; and

WHEREAS, the SDFD would like to issue permits and impose penalties to help curb this problem and save valuable emergency personnel time and resources; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 5 of the San Diego Municipal Code is amended by adding Division 51, sections 55.5101, 55.5102, 55.5103, 55.5104, 55.5105, 55.5106, 55.5107, 55.5108 55.5109, 55.5110, 55.5111, 55.5112, 55.5113, 55.5114, 55.5115, 55.5116, 55.5117, 55.5118, 55.5119, 55.5120, 55.5121, 55.5122 and 55.5123 to read as follows:

Article 5: Public Safety, Morals and Welfare

Division 51: Fire and Harmful Gas Emergency Alarms

§ 55.5101 Purpose and Intent

This Division creates a permitting system for fire and harmful gas alarm systems. It includes a schedule of penalties for *false alarms* as defined in this Division. The permitting and penalty regulations under this Division are in addition to the San

Diego Police Department false alarm regulations enacted in Chapter 3, Article 3, Division 37 of this Code.

§ 55.5102 Definitions

Defined terms appear in italics. The following definitions apply in this Division:

Alarm agent means any *person* who is directly or indirectly employed by a *fire-harmful gas alarm business*, and whose duties include selling any *fire-harmful gas alarm system*.

Alarm system administrator means an employee of the City of San Diego designated by the *alarm system official* to administer the *fire-harmful gas alarm system* permitting, track false alarms for purposes of penalties under this Division, report on program metrics, and act as a liaison with the public.

Alarm system official means the *Chief of Police*, the *Fire-Rescue Chief*, or any other official appointed by the City Manager to preside over the *fire-harmful gas alarm system* program in this Division.

Alarm user means any *person* who operates, activates, possesses or controls a *fire-harmful gas alarm system*, or who occupies, controls, or possesses the building or structure protected by a *fire-harmful gas alarm system*.

Business tax certificate has the same meaning as *certificate* in San Diego Municipal Code section 31.0110(a).

Chief of Police has the same meaning as San Diego Municipal Code section 33.0201.

Conversion means the assumption by one *fire-harmful gas alarm business* of the duty to service, maintain or monitor a *fire-harmful gas alarm system* previously monitored by another *fire-harmful gas alarm business*.

Emergency situation means any circumstance in which there is reason to believe that (1) there is an uncontrolled fire actively burning in or near a building or other structure; (2) there is a concentration of *harmful gas* in or near a building or other structure; or (3) there is an identifiable risk of harm to a person or property within or near a building or other structure.

Exempt user has the same meaning as in San Diego Municipal Code section 33.3701.

False alarm means any triggering of a *fire-harmful gas alarm system* that results in a response by San Diego Fire-Rescue Department personnel when an *emergency situation* does not exist. *False alarm* includes activations caused by mechanical failure, malfunction, accidental tripping, malicious tripping, misuse, or negligent maintenance by a *fire-harmful gas alarm business*, *fire-harmful gas alarm agent*, or *alarm user*. *False alarm* does not include activations caused by weather conditions, telephone line problems, water surges, water hammers, or any other factor over which the *fire-harmful gas alarm business*, *fire-harmful gas alarm agent*, or *alarm user* do not have direct control.

Fire alarm system means a *fire-harmful gas alarm system* that is designed to monitor buildings or other structures for *emergency situations* connected to uncontrolled fires, and evokes a San Diego Fire-Rescue Department response when the alarm system is triggered.

Fire-harmful gas alarm business means any *person* engaged in the enterprise of selling, installing, maintaining, servicing, inspecting or monitoring any *fire-harmful gas alarm system*. *Fire-harmful gas alarm business* does not include the owner or property manager of an apartment complex that provides *fire-harmful gas alarm systems* in each residential unit as an amenity.

Fire-harmful gas alarm system means any mechanical or electrical monitoring device capable of giving, signaling, or transmitting a fire or *harmful gas* emergency alarm that when triggered by an *emergency situation* emits a sound or transmits a signal or message that is intended to evoke a response by the San Diego Fire-Rescue Department. *Fire-harmful gas alarm system* includes *fire alarm systems* and *harmful gas alarm systems*. *Fire-harmful gas alarm system* excludes manually activated residential alarm systems.

Fire-Rescue Chief means the Chief of the Fire-Rescue Department of the City of San Diego.

Fire watch means a *person* who is a site-specific guard for the purpose of detecting an *emergency situation*. *Fire watch* includes only those *persons* who are trained in the use of fire extinguishers, the notification to the San Diego Fire-Rescue Department of an *emergency situation*, and in the operation of the *fire alarm system* where the *fire watch* is stationed.

Harmful gas means any form of gas other than smoke, ash, or dust from a fire, which is capable of causing harm to *persons* or property. For example, carbon monoxide is a *harmful gas*.

Harmful gas alarm system means a *fire-harmful gas alarm system* that is designed to monitor buildings or other structures for *emergency situations* connected to *harmful gas*, and evokes a San Diego Fire-Rescue Department response when the alarm system is triggered.

Person has the same meaning as in San Diego Municipal Code section 11.0210.

Sell has the same meaning as in San Diego Municipal Code section 33.3701.

Takeover means the assumption by one *alarm user* of the control of a *fire-harmful gas alarm system* previously controlled by another *alarm user*.

§ 55.5103 Fire-Harmful Gas Alarm Business Requirements and Responsibilities

- (a) It is unlawful for any *person* to operate a *fire-harmful gas alarm business* without a *business tax certificate*.
- (b) It is unlawful for any *person* to operate a *fire-harmful gas alarm business* not licensed as required by the State of California.
- (c) Any *fire-harmful gas alarm business* that sells any *fire-harmful gas alarm system* shall do the following:
 - (1) Obtain an *alarm user* permit, using the *alarm user* permit application provided by the *alarm system official*, on behalf of the *alarm user* before putting the *fire-harmful gas alarm system* into service;
 - (2) Collect the *alarm user* permit application and permit fee from each *alarm user*; and

- (3) Mail or hand deliver the completed *alarm user* permit application and permit fee to the *alarm system official* before putting the *fire-harmful gas alarm system* into service.
- (d) Any *person* or business that sells any *fire-harmful gas alarm system* and does not personally or through an agent install, maintain, service, inspect or monitor the *fire-harmful gas alarm system* for any location, shall provide to the purchaser at the time of the sale an *alarm user* permit application and certification form, as provided in San Diego Municipal Code section 55.5108. Subsection (c) does not apply to transactions covered under this subsection.

§ 55.5104 Alarm Agent Responsibilities

An *alarm agent* shall comply with all applicable licensing or registration requirements pursuant to California law.

§ 55.5105 Fire-Harmful Gas Alarm System Conversion

- (a) Prior to the *conversion* of any *fire-harmful gas alarm system*, the *fire-harmful gas alarm business* transferring the duty to monitor shall ensure that the *alarm user* has a valid *alarm user* permit for the *fire-harmful gas alarm system* being converted.
- (b) If the *alarm user* does not have a valid *alarm user* permit for the *fire-harmful gas alarm system* being converted, the *fire-harmful gas alarm business* transferring the duty to maintain, service, inspect or monitor shall obtain the *alarm user* permit on behalf of the *alarm user*.

§ 55.5106 Fire-Harmful Gas Alarm System Takeover

- (a) Upon any *takeover* of a *fire-harmful gas alarm system* maintained, serviced, inspected or monitored by a *fire-harmful gas alarm business*, the *fire-harmful gas alarm business* shall determine whether an *alarm user* permit has been issued to the *alarm user* assuming control of the *fire-harmful gas alarm system*.
- (b) Upon a determination that an *alarm user* permit has not been issued to the *alarm user* assuming control of the *fire-harmful gas alarm system*, the *fire-harmful gas alarm business* shall obtain an *alarm user* permit on behalf of the *alarm user*.
- (c) Nothing in this Division prohibits the *fire-harmful gas alarm business* from recovering from an *alarm user* the amount of the *alarm user* permit fee.

§ 55.5107 Alarm User Permit Required; Violation

- (a) It is unlawful for any *alarm user* to operate, activate, possess or control any *fire-harmful gas alarm system* unless the *alarm user* has a current valid *alarm user* permit issued by the *alarm system official* for that *fire-harmful gas alarm system*.
- (b) Except as provided in section 55.5103(c), the *alarm system official* shall collect *alarm user* permit applications and permit application fees from the *alarm user*.

§ 55.5108 Application for Alarm User Permit

- (a) Any *person* applying for an *alarm user* permit shall submit to the *alarm system official*, on a form provided by the *alarm system official*, a legibly written application containing the following information:
- (1) Name, address, and telephone number of the *alarm user* (including separate mailing address if applicable);
 - (2) Classification of the alarm location as residential or commercial;
 - (3) *Fire-harmful gas alarm system* type (such as fire or carbon monoxide);
 - (4) Area covered by *fire-harmful gas alarm system*;
 - (5) Name, address, and telephone number of the *person* authorized to respond to alarm signals and to allow access to the protected building or other structure; and
 - (6) Name, address, telephone number, City *business tax certificate* number, and State license number of the *fire-harmful gas alarm business* that will monitor the *fire-harmful gas alarm system*, if any.
- (b) All fees must be paid at the time the *alarm user* permit application is filed.
- (c) Each *alarm user* permit application must be accompanied by a signed certification by the *alarm user* and *fire-harmful gas alarm business* stating the following:
- (1) The date of the installation, *conversion*, or *takeover*, whichever is applicable;

- (2) The name, address, telephone number, City *business tax certificate* number, and State license number of the *fire-harmful gas alarm business* installing the *fire-harmful gas alarm system*, or performing the *conversion* or *takeover* of the *fire-harmful gas alarm system*;
 - (3) The name, address, and telephone number of the *fire-harmful gas alarm business* or *alarm agent* responsible for monitoring the *fire-harmful gas alarm system*, if any;
 - (4) That written operating instructions for the *fire-harmful gas alarm system*, including written guidelines regarding how to avoid *false alarms*, have been provided to the *alarm user* applying for the permit; and
 - (5) That the *fire-harmful gas alarm business* has provided to the *alarm user* applying for the permit all necessary information regarding the proper use of the *fire-harmful gas alarm system*, including instruction on how to avoid *false alarms*.
- (d) The *alarm system official* may deny the application for an *alarm user* permit if any of the information required pursuant to section 55.5108(a) and (c) is not provided.
- (e) An application will not be considered complete if, at the time the application is being considered, any penalty fees under section 55.5111 or any fines assessed to the *person* applying for an *alarm user* permit under section 55.5116 have not been paid.

§ 55.5109 Expiration of Alarm User Permits

- (a) An *alarm user* permit shall expire on the last day of the twenty-fourth month following the issuance of the permit.
- (b) The *alarm user* is responsible to renew an *alarm user* permit prior to the permit's expiration.
- (c) The *alarm system administrator* shall notify the *alarm user* when a permit is due to expire at least thirty days before it expires.

§ 55.5110 Alarm User Permits Not Transferable

Alarm user permits shall not be transferable from one *person* to another or from one building or other structure to another.

§ 55.5111 Fees and Penalties for Alarm User Permit

- (a) Except as otherwise specifically provided in this Division, any *person* who files an application for an *alarm user* permit shall at the time of filing the application pay a fee in accordance with the City Clerk's fee rate book and any outstanding penalty fee.
- (b) Any *alarm user* who does not have an *alarm user* permit and whose *fire-harmful gas alarm system* generates a San Diego Fire-Rescue Department call for service will be notified in writing that he or she must obtain an *alarm user* permit. If the *alarm user* has not obtained an *alarm user* permit within fifteen days after written notification by the San Diego Fire-Rescue Department, then the *alarm user* will be assessed a penalty for each San Diego Fire-Rescue Department call for service generated by his or her *fire-harmful gas alarm system* until the permit is obtained. The penalty

shall include cost recovery for the San Diego Fire-Rescue Department's response to the *false alarm*. The penalty schedule shall be kept in the City Clerk's fee rate book on file in the City Clerk's Office.

§ 55.5112 Responsibility for Fire-Harmful Gas Alarm Systems in Apartments

- (a) If an *alarm user* has multiple *fire-harmful gas alarm systems* in one building or structure, an *alarm user* permit is required for each separate system.
- (b) The tenant of a multiunit residential building or rental property whose unit contains a *fire-harmful gas alarm system* is deemed to be the *alarm user* if the *fire-harmful gas alarm system* was not provided by the owner of the multiunit residential or other rental property.
- (c) The owner of a multiunit residential or other rental property that provides a *fire-harmful gas alarm system* to tenants shall be deemed the *alarm user*.
- (d) Each *fire-harmful gas alarm system* control panel constitutes a separate alarm system and requires a separate *alarm user* permit.

§ 55.5113 Fire-Harmful Gas Alarm System Direct Dial Prohibition

It is unlawful for any *person* to program, install or use any *fire-harmful gas alarm system* to direct dial any emergency or "call for service" number serving the San Diego Fire-Rescue Department's Regional Communications Center.

§ 55.5114 Procedures for Alarm Verification

A *fire-harmful gas alarm business* shall, after contacting the San Diego Fire-Rescue Department, attempt to contact an *alarm user* in person, by telephone, or by other electronic means, in order to verify that the alarm signal is not false.

§ 55.5115 Revocation of an Alarm User Permit

- (a) A violation of any of the provisions of this Division shall constitute grounds for revocation of an *alarm user* permit.
- (b) The *alarm system official* may revoke any *alarm user* permit for any *fire-harmful gas alarm system* that has had *false alarms* in excess of the number permitted in section 55.5115(f).
- (c) The *alarm system official* will indicate on an *alarm user's* records that an alarm is false if the responding San Diego Fire-Rescue Department personnel do not find evidence that an *emergency situation* was the cause of the alarm being triggered. The *alarm system official* may amend the *alarm user's* records to indicate that the alarm was not a *false alarm* if, within ten business days of the alarm being triggered, the *alarm system official* receives satisfactory evidence to that effect. The *alarm system official* shall issue written findings of such decision within five business days of receipt of the evidence offered.
- (d) Upon revocation of any *alarm user* permit, the *alarm system official* will notify the holder of the permit in writing of the revocation.
- (e) The *alarm system official* shall notify the *alarm user* of the *alarm user's* first *false alarm* by letter.
- (f) The first two *false alarms* for an *alarm user* holding an *alarm user* permit, of each calendar year shall not be penalized either by a penalty or *alarm user* permit revocation. Additional *false alarms* each calendar year will be

penalized according to the penalties for false fire-harmful gas alarms contained in the City Clerk's fee rate book.

- (g) An *alarm user* permit that has been revoked pursuant to this Division is not a current valid *alarm user* permit.

§ 55.5116 Penalties for Alarm User Permit Revocations

- (a) An *alarm user* shall pay a penalty, according to the established rates kept in the City Clerk's fee rate book on file in the Clerk's Office, for each revocation of an *alarm user* permit and each subsequent *false alarm* Fire-Rescue Department response that *fire-harmful gas alarm system*.
- (b) A *fire-harmful gas alarm business* shall not be liable for any penalty imposed upon an *alarm user* for exceeding the permitted number of *false alarms* if the *fire-harmful gas alarm business* obtained the *alarm user* permit on behalf of the *alarm user*.

§ 55.5117 Reinstatement of Revoked Permit; Alarm User Permit Appeal

- (a) An *alarm user* whose permit has been revoked pursuant to section 55.5115 may apply for reinstatement of the permit by submitting to the *alarm system official* all penalties due pursuant to section 55.5116, and written evidence satisfactory to the *alarm system official* that the cause of the *false alarms* has been identified and corrected.
- (b) The *alarm system official* may reinstate an *alarm user* permit revoked pursuant to section 55.5115 upon the receipt of all penalties due pursuant to section 55.5116 and evidence satisfactory to the *alarm system official* that the cause of the *false alarms* has been corrected. The *alarm system*

official may also require such other conditions as may be appropriate to reinstate a revoked *alarm user* permit.

- (c) An *alarm user* may appeal a decision by the *alarm system official* to revoke the *alarm user* permit in accordance with the appeals process for Police Regulated Businesses found in Chapter 3, Article 3, Division 5 of this Code.

§ 55.5118 Use of Fire-Harmful Gas Alarm System after Permit Revocation as Public Nuisance

- (a) The *alarm system official* may declare a *fire-harmful gas alarm system* a public nuisance when all of the following conditions are present:
- (1) The *alarm user* permit has been revoked due to *false alarms*;
 - (2) The revoked *alarm user* permit has not been reinstated;
 - (3) The cause of the *false alarms* has not been corrected;
 - (4) The *alarm user's fire-harmful gas alarm system* continues to trigger *false alarms*; and
 - (5) If revoked, the decision of the *alarm system official* to revoke the permit is not currently on appeal pursuant to Chapter 3, Article 3, Division 5 of the code.
- (b) The *alarm system official* may remove a public nuisance designation from the *alarm user's* records when the *alarm user* permit has been reinstated and the cause of the *false alarms* has been corrected.

§ 55.5119 Posting a Fire Watch

The *alarm system official* may require an *alarm user* to post a *fire watch*, at the *alarm user's* expense, if a *fire alarm system* is unable to be repaired within twenty-four hours or if the lack of protection due to the alarm malfunctioning creates a life or property safety hazard. The *fire watch* shall be stationed at the building or other structure where the *false alarms* were generated.

§ 55.5120 Exceptions

The regulations in this Division do not apply to:

- (a) *Persons* engaged solely in the manufacture or repair of *fire-harmful gas alarm systems* or *fire-harmful gas alarm system* components from a fixed location who do not personally or through an agent install, or monitor the *fire-harmful gas alarm system* for any location, except as provided in section 55.5103(d).
- (b) *Exempt users* as defined in section 55.5102 of this Division.

§ 55.5121 Confidentiality of Records

- (a) The information furnished and secured pursuant to this Division shall not be subject to public inspection except when required by local, state or federal law.
- (b) An *alarm user* shall have access to information regarding the administration of that user's permit.

§ 55.5122 Enforcement Authority

The *alarm system official* is authorized to administer and enforce the provisions of this Division. The *alarm system official* may exercise any enforcement powers as provided in Chapter 1, Article 2, Division 1 of this Code.

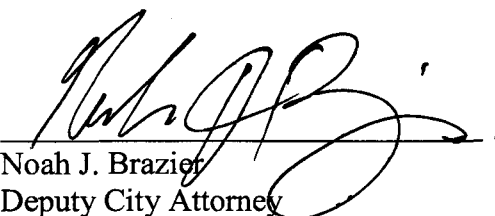
§ 55.5123 Enforcement Remedies

Except as otherwise specifically provided, violations of this Division may be prosecuted as misdemeanors subject to the fines and custody provided in San Diego Municipal Code section 12.0201. The *alarm system official* may also seek injunctive relief and civil penalties in the Superior Court pursuant to San Diego Municipal Code section 12.0202 or pursue any administrative remedy provided in Chapter 1, Article 2, Division 1 of this Code.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Noah J. Brazier
Deputy City Attorney

NJB:jdf
06/06/2011
09/12/2011 REV
Or.Dept:SDFD

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of SEP 27 2011.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10.3.11
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor