

Ordinance No. 501

An Ordinance to amend Chapter 140 of the Code of the City of New Castle to add a new Article VI establishing regulations, violations and penalties relating to disorderly premises and the operation of burglary alarms.

WHEREAS, the Council of the City of New Castle desires to address the problem of disorderly premises **and to establish regulations associated with the operation of burglary alarms** under Chapter 140 of the City Code;

NOW, THEREFORE BE IT ORDAINED by the Council of the City of New Castle, as follows:

SECTION 1: Chapter 140 of the Code of the City of New Castle is hereby amended to add a new Article VI, so that such Article shall read, in its entirety, as follows:

Article VI

Additional Property Related Regulations and Offenses

§ 140-41 – Disorderly premises.

- A. It shall be unlawful for any owner, owner's agent, manager, caretaker or person occupying a premises to allow, suffer or permit in any residence or upon any premises occupied by himself or herself any conduct which causes public inconvenience, annoyance, alarm to a reasonable person, or disrupts the quiet and good order of adjoining and surrounding properties including, but not limited to, engaging in fighting or in violent, tumultuous, or threatening behavior, making unreasonable noise or an offensively coarse utterance, gesture or display or addressing abusive language to any person present, obstructing vehicular traffic or pedestrian traffic, or creating a hazardous or physically offensive condition which serves no legitimate purpose. Any person who fails to obey the order of a Police Officer to dispel and disperse or otherwise discontinue the disturbing activity may be cited for an additional violation of this Section.
- B. In the event that the owner, owner's agent, manager or caretaker of a house, dwelling, or premises where the violation of Subsection A hereof has occurred does not occupy or reside at the property, such individual shall be presumed to allow, suffer or permit such conduct after receiving notice that such conduct has occurred and shall be in violation of this Section if a further violation of Subsection A occurs within one hundred eighty (180) days of receiving said notice.

- C. It shall be deemed that notice is properly served upon an owner, owner's agent, manager or caretaker if a copy of such notice is delivered to the owner, owner's agent, manager or caretaker personally or to the registered office of the owner, owner's agent, manager or caretaker or by leaving such notice at the usual place of abode, in the presence of a family member of suitable age and discretion who shall be informed of the contents of such notice or by certified mail addressed to the owner, owner's agent, manager or caretaker at the last known address of such owner, owner's agent, manager or caretaker or the mailing address of the owner of the subject premises as recorded on the **New Castle** County Assessment Records or the Residential Rental Property Registration System. After service of notice such owner, owner's agent, or manager or caretaker shall make a good faith effort to develop a plan of action with the City Police Department and the New Castle City Solicitor to prevent further violation of Subsection A.
- D. Any person convicted of a violation of this Section shall be fined no more than one thousand dollars (\$1,000.00) for any offense but no less than one hundred dollars (\$100.00) for the first offense, no less than three hundred dollars (\$300.00) for the second offense, and no less than five hundred dollars (\$500.00) for each subsequent like offense. In any prosecution for an offense under this Section, it shall be an affirmative defense, which must be proved by the preponderance of the evidence, that the occupant has been evicted and is no longer on the premises, or if there is pending at the time of trial an eviction action against the occupant of the premises which action is being pursued in good faith. Otherwise the fines imposed under this Subsection shall not be suspended.
- E. This Section shall be enforced by the Police Department.

§ 140-41 - Operation of burglary alarm systems.

- A. *Definitions.* The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.

Alarm administrator means a person or persons designated by the City of New Castle to administer, control and review false alarm reduction efforts and administer the provisions of this Section.

Alarm installation company means a person in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing an alarm system at an alarm site.

Alarm dispatch request means a notification to a law enforcement authority that an alarm, either manual or automatic, has been activated at a particular alarm site.

Alarm registration means authorization granted by the alarm administrator to an alarm user to operate an alarm system.

Alarm site means a single fixed premises or location served by an alarm system or systems. Each unit, if served by a separate alarm system in a multi-unit building or complex, shall be considered a separate alarm site,

Alarm system means a device or series of devices, including, but not limited to, hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals, which emit or transmit a remote or local audible, visual or electronic signal indicating an alarm condition and intended to summon law enforcement authority response, including local alarm systems. Alarm system does not include an alarm installed in a vehicle or on someone's person unless the vehicle or the personal alarm is permanently located at a site.

Alarm user means any person, who or which has contracted for monitoring, repair, installation or maintenance service from an alarm installation company or monitoring company for an alarm system, or who or which owns or operates an alarm system which is not monitored, maintained or repaired under contract.

Arming station means a device that allows control of an alarm system.

Automatic voice dialer means any electrical, electronic, mechanical, or other device capable of being programmed to send a prerecorded voice message, when activated, over a telephone line, radio or other communication system, to a law enforcement authority, public safety or emergency services agency requesting dispatch.

Cancellation means the process where response is terminated when a monitoring company (designated by the alarm user) for the alarm site notifies the responding law enforcement agency that there is not an existing situation at the alarm site requiring law enforcement authority response after an alarm dispatch request.

Conversion means the transaction or process by which one (1) alarm installation company or monitoring company begins the servicing and/or monitoring of a previously unmonitored alarm system or an alarm system previously serviced and/or monitored by another alarm company.

Duress alarm means a silent alarm system signal generated by the entry of a designated code into an arming station in order to signal that the alarm user is being forced to turn off the system and requires law enforcement authority response.

False alarm means an alarm dispatch request to a law enforcement authority, when no emergency or actual or threatened criminal activity requiring immediate response exists. This definition includes signals activated by negligence, accident, mechanical failure, and electrical failure; signals activated intentionally in non-emergency situations; and signals for which the actual cause of activation is unknown. There is a rebuttable presumption that an alarm is false if personnel responding from a law enforcement authority do not discover any

evidence of unauthorized entry, criminal activity, or other emergency after following normal police procedures in investigating the incident. An alarm is not false if the alarm user proves that (i) an individual activated the alarm based upon a reasonable belief that an emergency or actual or threatened criminal activity requiring immediate response existed; (ii) the alarm system was activated by lightning or an electrical surge that caused physical damage to the system; or, (iii) if the alarm user experienced a power outage of four (4) or more hours, causing the alarm to activate upon restoration of power, as evidenced by written documentation provided by Delmarva Power, the Municipal Services Corporation or other applicable provider.

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

Law enforcement authority means any authorized representative of a law enforcement agency, including but not limited to the New Castle City Police Department.

Local alarm system means any alarm system, which is not monitored, that sounds an alarm only at the alarm site.

Monitoring means the process by which a monitoring company receives signals from an alarm system and relays an alarm dispatch request to a law enforcement agency for the purpose of summoning law enforcement to the alarm site.

One plus duress alarm means the manual activation of a silent alarm signal by entering at an arming station, a code that adds one to the last digit of the normal arm/disarm code (e.g. normal code = 1234, one plus duress code = 1235).

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 authority response.

Person means an individual, corporation, partnership, association, organization or similar entity.

Responder means an individual capable of reaching the alarm site within thirty (30) minutes and having access to the alarm site, the code to the alarm system, and the authority to approve repairs to the alarm system.

SIA control panel standard CP-01 means the ANSI - American National Standard Institute 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 the incidence of false alarms. Control panels built and tested to this standard by Underwriters Laboratory (UL), or other nationally recognized testing organizations, will be marked to state; "Design

evaluated in accordance with SIA CP-01 control panel standard features for false alarm reduction."

Takeover means the transaction or process by which an alarm user takes over control of an existing alarm system, which was previously controlled by another alarm user.

Verify means an attempt by the monitoring company, or its representative, to contact the alarm site by telephonic or other electronic means, whether or not actual contact with a person is made, to determine whether an alarm signal is valid before requesting law enforcement dispatch, in an attempt to avoid an unnecessary alarm dispatch request.

Zones means division of devices into which an alarm system is divided to indicate the general location from which an alarm system signal is transmitted.

B. *Registration required; application; transferability; false statements.*

1. No alarm user shall operate, or cause to be operated, an alarm system at its alarm site without a valid alarm registration. A separate alarm registration is required for each alarm site. The alarm registration application form must be submitted to the alarm administrator within thirty (30) days after the alarm system activation or alarm system takeover. Failure to submit a timely application will be classified as use of a non-registered alarm system and citations and penalties shall be assessed without waiver.

2. Upon receipt of a completed alarm registration application form, the alarm administrator shall register the applicant unless the applicant has:

- a. failed to pay a fine assessed under this Section; or
- b. had an alarm registration for the alarm site suspended or revoked, and the violation causing the suspension or revocation has not been corrected.

3. Each alarm registration application must include the following information:

- a. the name, complete address (including apartment/suite number) and telephone numbers of the person who will be the registration holder and be responsible for the proper maintenance and operation of the alarm system;
- b. the classification of the alarm site as either residential (includes apartment, condominium, mobile home, etc.) or commercial;
- c. for each alarm system located at the alarm site, the classification of the alarm system (i.e. burglary, holdup, duress, panic alarms or other) and for each classification whether such alarm is audible or silent;
- d. mailing address, if different from the address of the alarm site;
- e. any dangerous or special conditions present at the alarm site;
- f. names and addresses of at least two (2) individuals who are able and have agreed to: (i) receive notification of an alarm system activation at any time; (ii) respond to the alarm site within thirty (30) minutes at any time; and (iii) upon request can grant access to the alarm site and deactivate the alarm system if necessary.

- g. type of business conducted at a commercial alarm site;
- h. signed certification from the alarm user stating the following:
 - i. the date of installation, conversion or takeover of the alarm system; whichever is applicable;
 - ii. the name, address, and telephone number of the alarm installation company or companies performing the alarm system installation, conversion or takeover and of the alarm installation company responsible for providing repair service to the alarm system.
 - iii. the name, address, and telephone number of the monitoring company if different from the alarm installation company;
 - iv. that a set of written operating instructions for the alarm system, including written guidelines on how to avoid false alarms, has been left with the applicant by the alarm installation company; and
 - v. that the alarm installation company has trained the applicant in proper use of the alarm system, including instructions on how to avoid false alarms.
- i. acknowledgment that law enforcement authority response may be influenced by factors including, but not limited to the availability of police units, priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels, etc.

4. Any false statement of a material fact made by an applicant for the purpose of obtaining an alarm registration shall be sufficient cause for refusal to issue an alarm registration.

5. An alarm registration cannot be transferred to another person or alarm site. An alarm user shall inform the alarm administrator of any change that alters any of the information listed on the alarm registration application within five (5) business days of such change.

C. *Duties of the alarm user.*

1. An alarm user shall:

- a. Maintain the alarm site and the alarm system in a manner that will minimize or eliminate false alarms;
- b. Make every reasonable effort to have a responder to the alarm system's location within thirty (30) minutes when requested by a law enforcement authority order to:
 - i. Deactivate an alarm system;
 - ii. Provide access to the alarm site; and/or
 - iii. Provide alternative security for the alarm site.
- c. Not activate an alarm system for any reason other than an occurrence of an event that the alarm system was intended to report.

2. An alarm user shall adjust the mechanism or cause the mechanism to be adjusted so that an alarm signal audible on the exterior of an alarm site will sound for no longer than ten (10) minutes after being activated.

3. An alarm user shall have a licensed company inspect the alarm system after two (2) false alarms in a twelve (12) month period. The alarm administrator may waive a required inspection if it determines that a false alarm(s) could not have been related to a defect or malfunction in the alarm system.
4. An alarm user shall not use automatic voice dialers.
5. An alarm user shall maintain, at each alarm site, a set of written operating instructions for each alarm system.
6. All alarm users shall have an "acclamation period" for the first seven (7) days after installation of an alarm system during which time the alarm installation company and/or monitoring company will have no obligation to and will not respond to any alarm signal from the alarm site and will not make an alarm dispatch request to law enforcement, excluding panic, duress and holdup signals. The alarm administrator may grant an alarm user's request for an exemption from this waiting period based upon a determination that special circumstances substantiate the need for the exemption.

D. *Duties of alarm installation company and monitoring company.*

1. The alarm installation company shall provide written and oral instructions to each of its alarm users on the proper use and operation of their alarm systems. Such instructions will specifically include all instructions necessary to turn the alarm system on and off and to avoid false alarms.
2. An alarm installation company shall not use automatic voice dialers.
3. After completion of the installation of an alarm system, an alarm installation company employee shall review with the alarm user a false alarm prevention checklist approved by the alarm administrator.
4. The monitoring company shall not make an alarm dispatch request of a law enforcement authority in response to a burglar alarm signal, excluding panic, duress and holdup signals, during the acclamation period, defined as the first seven (7) days following an alarm system installation. The alarm administrator may grant an alarm user's request for an exemption from this waiting period based upon a determination that special circumstances substantiate the need for the exemption.
5. A monitoring company shall:
 - a. Report alarm signals by using telephone numbers designated by the alarm administrator;
 - b. Verify every alarm signal, except a duress or holdup alarm activation before requesting a law enforcement authority response to an alarm system signal by calling the site of the alarm, if unable to make contact, the monitoring company shall call one (1) additional number provided by the alarm user who has the authority to cancel the dispatch, unless the alarm administrator has waived the two (2) call dispatch requirement;
 - c. Communicate alarm dispatch requests to law enforcement in a manner and form determined by the alarm administrator;

- d. Communicate cancellations to the law enforcement authority in a manner and form determined by the alarm administrator;
- e. Ensure that all alarm users of alarm systems equipped with a duress, holdup or panic alarm are given adequate training as to the proper use of the duress, holdup or panic alarm;
- f. Communicate any available information (north, south, front, back, floor, etc.) about the location on all alarm signals related to the alarm dispatch request;
- g. Communicate type of alarm activation (silent or audible, interior or perimeter);
- h. Provide an alarm user registration number when requesting law enforcement dispatch;
- i. After an alarm dispatch request, promptly advise the law enforcement authority if the monitoring company knows that the alarm user or the responder is on the way to the alarm site;
- j. Attempt to contact the alarm user or responder within twenty-four (24) hours via mail, fax, telephone or other electronic means when an alarm dispatch request is made; and
- k. Upon the effective date of this Section, monitoring companies must maintain for a period of at least one (1) year from the date of the alarm dispatch request, records relating to alarm dispatch requests. Records must include the name, address and telephone number of the alarm user, the alarm system zone(s) activated, the time of alarm dispatch request and evidence of an attempt to verify. The alarm administrator may request copies of such records for individually named alarm users. If the request is made within sixty (60) days of an alarm dispatch request, the monitoring company shall furnish requested records within three (3) business days of receiving the request. If the records are requested between sixty (60) days to one (1) year after an alarm dispatch request, the monitoring company shall furnish the requested records within thirty (30) days of receiving the request.

6. An alarm installation company and/or monitoring company that purchases alarm system accounts from another person shall notify the alarm administrator of such purchase and provide details as may be reasonably requested by the alarm administrator.

E. *License or licensing.* All alarm installation companies and monitoring companies shall maintain a license in accordance with the provisions of the Delaware Code and a business license in accordance with the provisions of the Code of the City of New Castle.

F. *Duties and authority of the alarm administrator.*

1. The alarm administrator shall:

- a. Designate a manner, form and telephone number for the communication of alarm dispatch requests; and
- b. Establish a procedure to accept cancellation of alarm dispatch requests.

2. The alarm administrator shall establish a procedure to record such information on alarm dispatch requests necessary to permit the alarm administrator to maintain records, including, but not limited to, the information listed below:

- a. Identification of the registration number for the alarm site;
- b. Identification of the alarm site;
- c. Date and time alarm dispatch request was received, including the name of the monitoring company and the monitoring operator name or number;
- d. Date and time of law enforcement authority arrival at the alarm site;
- e. Zone and zone description, if available;
- f. Weather conditions;
- g. Name of alarm user's representative at alarm site, if any;
- h. Identification of the responsible alarm installation company or monitoring company;
- i. If the law enforcement authority was unable to locate the address of the alarm site; and
- j. Cause of alarm signal, if known.

3. The alarm administrator shall establish a procedure for the notifying of the alarm user of a false alarm. The notice shall include the following information:

- a. The date and time of law enforcement authority response to the false alarm; and
- b. A statement urging the alarm user to ensure that the alarm system is properly operated, inspected, and serviced in order to avoid false alarms and resulting fines.

4. The alarm administrator may require a conference with an alarm user and the alarm installation company and/or monitoring company responsible for the repair or monitoring of the alarm system to review the circumstances of each false alarm.

5. The alarm administrator may require an alarm user to remove a holdup alarm that is a single action, non-recessed button, if a false holdup alarm has occurred.

G. *False alarms prohibited.* No alarm user shall cause, allow, or permit the alarm system to give three (3) or more false alarms in a twelve (12) month period.

H. *Penalties.*

1. Each violation of this Section shall be penalized as follows:

- a. For the third false alarm within a twelve (12) month period, by a civil penalty of one hundred dollars (\$100.00).
- b. For the fourth false alarm within a twelve (12) month period, by a civil penalty of two hundred dollars (\$200.00).
- c. For the fifth and any subsequent false alarms within a twelve (12) month period, by a civil penalty of two hundred fifty dollars (\$250.00).

2. In addition, any person operating a non-registered alarm system will be subject to a civil penalty of fifty dollars (\$50.00) for each false alarm in addition to any other civil penalties. The alarm administrator may waive this additional civil penalty for a non-

registered system if the alarm user submits an application for alarm registration within ten (10) days after notification of such violation.

3. If cancellation occurs prior to law enforcement authority arriving at the scene, this is not a false alarm for the purpose of civil penalties, and no civil penalties will be assessed.

I. *Notification.* The alarm administrator shall notify the alarm user in writing after each false alarm. The notification shall include: the amount of the fine for the false alarm, the fact that response will be suspended after the fifth false alarm, excluding duress, holdup and panic alarms, and a description of the appeals procedure available to the alarm user. The alarm administrator will notify the alarm user and the alarm installation company or monitoring company in writing after alarm response has been suspended, except to duress, holdup and panic alarms. This notice of suspension will also include the amount of the fine for each false alarm and a description of the appeals procedure available to the alarm user.

J. *Suspension of response.*

1. On any alarm site, other than a financial institution alarm site, the alarm administrator may suspend law enforcement authority response to an alarm site by revoking the alarm registration if it is determined that:

- a. The alarm user has more than five (5) false alarms in a twelve (12) month period, excluding duress, holdup or panic alarms;
- b. There is a statement of a material fact known to be false in the application for a registration;
- c. The alarm user has failed to make timely payment of a civil penalty assessed under this Section; or,
- d. The alarm user has failed to submit a written certification from an alarm installation company that complies with the requirements of this article, stating that the alarm system has been inspected and repaired (if necessary) and/or additional training has been conducted by the alarm installation company.

2. Nothing herein shall:

- a. Preclude a law enforcement authority from responding to duress, holdup or panic alarms, calls describing emergencies or crimes in progress, or routine calls for service;
- b. Limit law enforcement authority from issuing civil violation notices for false alarms; or
- c. Be construed to create a duty to respond in any circumstances where such a duty does not exist pursuant to the statutory or common law of Delaware.

K. *Restoration of response to terminated locations.* To regain law enforcement authority response to an alarm site, the alarm user must submit a written report from a licensed alarm installation company certifying that the alarm system has been inspected, repaired if required, and that it is functioning properly or submit alarm registration information, as applicable. In addition, the alarm user must pay all outstanding civil penalties.

L. *Enforcement.* The City of New Castle Police Department shall be responsible for administering and enforcing the provisions of this section, including but not limited to developing both a form of citation to be issued for violations, and procedures for collection of the civil penalties imposed under this Section.

M. *Confidentiality.* In the interest of public safety, all information contained in and gathered through the alarm registration applications shall be held in confidence by all employees or representatives of the City of New Castle and by any third-party alarm administrator or employees of a third-party alarm administrator with access to such information.

N. *Government immunity.* Alarm registration is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, of response. Any and all liability and consequential damage resulting from the failure to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. By applying for an alarm registration, the alarm user acknowledges that law enforcement response may be influenced by factors such as: the availability of police units, priority of call, weather conditions, traffic conditions, emergency conditions, staffing levels and prior response history.

SECTION 2: Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase irrespective of the fact that any one or more thereof is declared unconstitutional or invalid.

SECTION 3. Repealer. Ordinances or parts of Ordinances in conflict herewith are hereby repealed; provided that any such repeal shall not abate a right of action already accrued under any repealed Ordinance.

SECTION 4. Effective Date. This Ordinance shall become effective immediately upon passage.

First Reading February 10, 2015

Second Reading _____

Signed this _____ day of _____, 2015

Linda Ratchford, President of Council

I hereby certify that the foregoing Ordinance was duly approved by the Council of the Mayor and Council of New Castle upon the dates above set forth and signed by the President of Council.

Janet E. Wurtzel, City Clerk

Approved this _____ day of _____, 2015

Donald A. Reese, Mayor