



ROCKY MOUNT
CITY MANAGER'S OFFICE
THE CENTER OF IT ALL
City Council Agenda

Date: May 30, 2019

To: The Honorable Mayor and City Council

Subject: City ordinance Amendment, Chapter 3 – Alarm Systems

Summary of Requested Action:

Approve amendments to Chapter 3 of the City Ordinances regulating alarm systems. The amendments were made to opt-out of criminal enforcement of this ordinance.

Department Requesting Action:
Police Department

Budgetary Impact:
None

City Manager's Recommendation: *Recommended Approval. R. S. Jones 6/3/19*

MEMORANDUM



ROCKY MOUNT
POLICE
THE CENTER OF IT ALL

To: City Manager Rochelle Small-Toney
Cc: Police Department
From: Chris Ballard *Chris Ballard*
Date: May 30, 2019
Re: City Ordinance Amendment, Chapter 3 – Alarm Systems

RBW 595 5/31/19

In April of this year a review of the False Alarm Ordinance revealed an issue with the collection of the associated fees. The issue is, if the ordinance is criminally enforceable, all funds would have to be remitted to the local school administration in accordance with G.S. 14-4 unless the ordinance specifically states that the provisions of G.S. 14-4 do not apply. I enlisted the help of City Attorney Rose to address the issue and he submitted revisions to the ordinance to opt-out of criminal enforcement of this ordinance. Opting out of criminal enforcement of an ordinance is covered in G. S. 160A-175. The amendments he proposed accompany this memorandum and Council agenda request.

Penalty or Fine Imposed for Violation of Local Ordinance that is Criminally Enforceable under G.S. 14-4

All ordinances adopted by municipalities and counties are criminally enforceable under G.S. 14-4, unless the unit's governing board specifically states in the ordinance that the provisions of G.S. 14-4 do not apply. (G.S. 14-4 makes violation of a local ordinance a Class 3 misdemeanor.) The North Carolina Supreme Court has held that if a local ordinance is criminally enforceable under G.S. 14-4, then the clear proceeds of any civil penalty or fine assessed for a violation of the local ordinance must be remitted to the local school administrative unit(s) in the county in which the penalty or fine was assessed. See *Cauble v. City of Asheville*, 301 N.C. 340, 271 S.E.2d 258 (1980). And the clear proceeds of the penalty or fine must be distributed to the public schools even if there is not an actual criminal prosecution of the violator. In essence, by enacting G.S. 14-4, the General Assembly has made violation of a local ordinance a breach of the penal law of the state—thereby implicating Art. IX, Sect. 7.

A local government may opt-out of criminal enforcement of a local ordinance if it so states in the ordinance. See G.S. 160A-175 (municipalities); G.S. 153A-123 (counties). If a county or municipality opts-out of criminal enforcement of a particular ordinance, then any penalty or fine collected for violation of the ordinance may be retained by the local unit.

To illustrate, suppose a municipality adopts an ordinance proscribing overtime parking and imposing a \$25 fee on any vehicle owner who violates the ordinance. The city employs a parking enforcement officer who places citations on each motor vehicle indicating overtime parking. An individual who receives a citation is directed to pay the fee to the city within a certain timeframe. If the ordinance is otherwise silent with respect to enforcement, then the provisions of G.S. 14-4 automatically apply and violation of the ordinance is a Class 3 misdemeanor. Because of this, the clear proceeds of any civil penalty collected by the municipality for violation of the ordinance must be distributed to the local school administrative unit(s) in the county in which the municipality is located. (This is true even if the unit never pursues the criminal remedy against the violator.) If, however, the ordinance specifies that the unit opts-out of criminal enforcement under G.S. 14-4, then the unit may keep all of the penalty proceeds.

**ORDINANCE AMENDING CHAPTER 3-ALARM SYSTEMS
OF THE CODE OF ORDINANCES OF THE CITY OF
ROCKY MOUNT TO PROVIDE FOR A FALSE ALARM
RESPONSE FEE TO COMPENSATE THE CITY FOR A
PORTION OF THE COST RESULTING FROM FALSE ALARMS**

Be it ordained by the City Council of the City of Rocky Mount:

Section 1. The following sections of Chapter 3 of the City Code are amended to read as follows:

Sec. 3-2. is amended to add the following definition:

False Alarm Response Fee means a civil fee or penalty for a False Alarm assessed against an Alarm User, or other person operating an Alarm System without an Alarm Registration. The False Alarm Response Fee is assessed to compensate the City for a portion of the expense caused by a False Alarm and not as a criminal penalty to punish a person violating this ordinance.

Sec. 3-3.(f) is amended to read as follows:

- (f) All False Alarm Response Fees owed by an applicant under this ordinance must be paid before an Alarm Registration may be issued or renewed.

Sec. 3-7 False Alarm Response Fees, is amended to read as follows:

- (a) False Alarm Response Fees shall be assessed to compensate the City for a portion of the cost incurred as a result of False Alarms. The False Alarm Response Fee is not a fine or criminal penalty under N.C. Gen. Stat. §14-4, and the City expressly opt-out of criminal enforcement of this ordinance as provided in N.C. Gen Stat. § 160A-175.
- (b) An Alarm User shall be liable for False Alarm Response Fees, depending on the number of False Alarms within a twelve (12) month period, based upon the following schedule:

(1) False Alarm Response Fees:

Number of False Alarm	False Alarm Response Fees
1	\$0
2	\$0
3	\$0
4	\$50
5	\$50

6	\$100
7	\$100
8	\$250
9	\$250
10 or more	\$500

- (c) In addition, any person operating an Alarm System without an Alarm Registration will be liable for a False Alarm Response Fee of one hundred dollars (\$100.00) for each False Alarm in addition to any other fees provided under this ordinance. The False Alarm Response Fee for an unregistered system shall be waived if the Alarm User submits an application for Alarm Registration within ten (10) days after notification of such violation.
- (d) If Cancellation occurs prior to law enforcement's arriving at the scene no False Alarm shall be deemed to have occurred and no False Alarm Response Fees shall be assessed.
- (e) If the officer responding to the False Alarm determines that an on-site employee of the Alarm Installation Company directly caused the False Alarm, no False Alarm shall be deemed to have occurred and no False Alarm Response Fee shall be assessed against the Alarm User.
- (f) Notice of the right of Appeal under this ordinance will be included with any notice of False Alarm Response Fees

Sec. 3-8. Notification, is amended to read as follows:

The Alarm Administrator shall notify the Alarm User in writing after each False Alarm. The notification shall include: the amount of the False Alarm Response Fee, if any, for the False Alarm, the fact that response will be suspended after the tenth (10th) False Alarm, excluding Duress Alarms, Holdup Alarms, 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 for Duress Alarms, Holdup Alarms, and Panic Alarms. This notice of suspension will also include the amount of the False Alarm Response Fee for each False Alarm and a description of the appeals procedure available to the Alarm User.

Sec. 3-9.(a)(3) is amended to read as follows:

- (a) The Alarm Administrator may suspend law enforcement response to an Alarm Site by revoking the Alarm Registration if it is determined that:
 - (3) The Alarm User has failed to make payment of a False Alarm Response Fee assessed under section 3-7 or the Alarm Registration fee due under section 3-3 within thirty (30)

days of the date the False Alarm Response Fee is assessed or the Alarm Registration fee is due; or

Sec. 3-10.(b)(3) is amended to read as follows:

- (b) The Alarm User may appeal any of the foregoing decisions of the Alarm Administrator to the Law Enforcement Authority as follows:
 - (3) Filing of a request for appeal shall stay the action by the Alarm Administrator revoking an Alarm Registration or requiring payment of a False Alarm Response Fee, until the Law Enforcement Authority has rendered its decision. If an appeal is not made within the twenty (20) business day period, the action of the Alarm Administrator is final.

Sec. 3-12.(b) is rewritten to read as follows:

- (b) Alarm Users shall be subject to False Alarm Response Fees for False Alarms and for operating a non-registered Alarm System as provided in section 3-7.

Section 2. Severability

The provisions of this ordinance are severable. Should a court of competent jurisdiction determine that any word, phrase, clause, sentence, paragraph, subsection, section, or other provision is unenforceable, unconstitutional, or otherwise invalid, or that the application of any part or provision to any person or circumstance is unenforceable, unconstitutional, or otherwise invalid, the remaining provisions and the application thereof shall not be affected by that decision.

Section 3. All ordinances or clauses of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance is effective from and after its adoption.

INTRODUCED: _____

ADOPTED: _____

Pamela O. Casey
City Clerk