

ORDINANCE NO. 2010-06

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, AMENDING CHAPTER 26, "EMERGENCY SERVICES" OF THE CODE OF ORDINANCES OF THE CITY OF TOMBALL TO ESTABLISH POLICIES, PROCEDURES AND REGULATIONS AS THEY RELATE TO ALARMS; PROVIDING A PENALTY IN AN AMOUNT OF NOT MORE THAN \$500 FOR VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SAVINGS AND SEVERABILITY; PROVIDING FOR PUBLICATION; AND MAKING OTHER PROVISIONS AND FINDINGS RELATED THERETO.

WHEREAS, various state laws regulate alarms, alarm companies, alarm installers and alarm sales in the state of Texas; and

WHEREAS, Texas Local Government Code § 214.191 (formerly Tex.Loc.Gov't Code Ch. 218) authorizes municipal permits for certain alarm systems; and

WHEREAS, Texas Local Government Code § 233.091 authorizes county regulation of certain alarm systems and expressly does not affect the authority of a municipality to enact ordinances regulating alarm systems; and

WHEREAS, City Council finds it necessary to amend its existing alarm regulations to protect the public safety based on changing technology and use of alarm systems; now therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS:

Section 1. The facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct.

Section 2. Chapter 26, Emergency Services, of the Code of Ordinances of the City of Tomball is hereby to read as follows:

“Chapter 26 – Emergency Services

Article I. In General

Sec. 26.1 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:

Alarm notification means a notification to the Tomball Police or Fire Department, intended to summon the proper public safety entity, and designed to be initiated:

- (a) intentionally by a person;
- (b) by an alarm system that responds to a stimulus characteristic of unauthorized intrusion; or
- (c) by an automatic or manual response to an incident of a fire or by the activation of a fire suppression or fire detection system.

Alarm site means the property served by an alarm system and under the control of a single owner, tenant, or lessor.

- (a) Residential site means a single family residence and each residential unit of a multi-unit building or complex that is served by an alarm system.
- (b) Commercial site means every premises or location where any business activity is regularly conducted and that is served by an alarm system. Each unit of a business premise or business location, if served by a separate alarm system in a multi-unit building or complex, shall be considered a separate commercial alarm system site.
- (c) Financial site means every premise or location of a financial institution that is required to have an alarm system pursuant to the Bank Protection Act of 1968.
- (d) Education/government site means every premise or location of a public or private school, as well as every location of a federal, state, county, or municipal governmental building.

Alarm system means electrical, electronic, or mechanical equipment that emits, transmits, or relays a signal intended to summon the police or fire department by direct or indirect means, except:

- (a) an alarm system installed on a motor vehicle, unless the vehicle is permanently located at an alarm site;
- (b) an alarm system designed to alert only the residents of a premise not equipped with a local alarm;
- (c) an alarm system installed on a premise:
 - (1) occupied by the United States Government; or
 - (2) owned and occupied by state government;

Alarm system business means a person who sells, installs, services, monitors, or responds to alarm systems or alarm notifications.

Burglar alarm means a device or system that transmits a signal intended to summon police in response to a burglary.

City means the City of Tomball, Texas.

False alarm notification means an alarm notification to the police or fire department resulting in a finding by the responding officer or fire officer or a subsequent investigation by the City, that there is no evidence of actual or attempted unauthorized intrusion, robbery, attempted robbery, other illegal activity or the presence of fire.

Fire alarm system means an alarm system intended to summon the Fire Department for the presence of smoke, fire, heat, or sprinkler system activation, activated by manual or automatic means.

Fire Department means the City of Tomball Fire Department.

Local alarm means an alarm system that emits a signal at an alarm site that is audible or visible from the exterior of a structure and is not connected to a monitoring site.

Master alarm permit means a permit issued to the owner or property manager of a residential apartment complex in which an alarm system operates in one or more individual residential units.

Owner means the person in control of the property including, but not limited to, every person in possession of land within the corporate limits of the City either as owner, purchaser, lessee, tenant or licensee.

Panic alarm means an alarm system that is utilized at either a business, or at the residence of a person, monitored by an alarm system company, and designed only to permit the person to signal the occurrence

of a personal emergency so that the company may dispatch appropriate aid.

Permit holder means the individual responsible for payment of all fees, charges or any civil action that may arise from the operation of an alarm system.

Police Department means the City of Tomball Police Department.

Sec. 26.2 Policies and Procedures

The City Manager may:

- (a) adopt policies and procedures to implement this chapter;
- (b) publish standards of operation for an alarm system; and
- (c) provide a copy of the standards to each permit holder.

Sec. 26.3 Public Safety Response

The Tomball Police Department or the Tomball Fire Department shall respond to the activation of a permitted alarm system as prescribed by the policies and procedures adopted by the City Manager, including the response priorities established by the departments.

Sec. 26.4 Governmental Immunity

An alarm permit is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, for a city emergency response. Any and all liability and consequential damage resulting from the failure or inability to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. By applying for an alarm permit, the alarm user acknowledges that a city emergency response may be influenced by factors such as the availability of city emergency services, priorities of calls, weather conditions, emergency conditions, staffing levels, and prior response history.

Article II. Permits and Applications

Sec. 26.10. Permit Required

- (a) A person shall obtain an alarm permit issued by the City of Tomball before the person operates an alarm system.
- (b) A person must obtain a separate alarm permit for each alarm site.

- (c) A permit holder shall:
 - (1) keep the alarm permit at the alarm site; and
 - (2) produce the alarm permit for inspection at the request of an employee of the Police or Fire Department.

Sec. 26.11 Permit Application Fees

The nonrefundable application fee for an alarm permit, an annual permit renewal, or a permit reinstatement is:

- (a) \$50 for nonresidential areas of an apartment complex equipped with a burglary alarm, hold-up, panic, duress alarm system, or fire alarm system; and
- (b) \$50 for commercial alarm sites equipped with a burglary alarm, hold-up, panic alarm, or fire alarm system.

Sec. 26.12 Permits for System in an Apartment Complex

- (a) The owner or property manager of an apartment complex shall obtain a master alarm permit if an alarm system is operated in:
 - (1) a residential unit on the premises, whether the alarm system is furnished by the owner or property manager or contracted for by an individual tenant; or
 - (2) a non-residential area of the apartment complex, including a common tenant area, office, storage, or equipment area.
- (b) A tenant of an apartment complex shall obtain an individual alarm permit before the tenant operates or causes the operation of an alarm system in the tenant's residential unit.

Sec 26.13 Permit Applications and Renewal

- (a) A person who owns leases, occupies, or manages an alarm site shall file an application for an alarm permit and the application fee under this chapter with the City of Tomball on an approved form.
 - (1) The name, address, telephone number, and driver's license number of the person who will be the permit holder and be responsible for the proper maintenance and operation of the alarm system and payment of fees assessed under this article;
 - (2) the classification of the alarm site as either residential or commercial;

- (3) identification of the alarm system as either a burglar alarm, hold-up, panic, duress alarm, fire alarm system or a combination of the above;
 - (4) any other information required by the City that is necessary for the enforcement of his article.
- (b) A permittee shall file an application to renew a permit not later than 30-days before its expiration.

Sec 26.14 Permit Terms

- (a) A permit issued under this chapter is effective for 12 months from the date of issuance.
- (b) A permit issued under this chapter is non-transferable and non-refundable.

Sec 26.15 Other Fees.

A permittee, including the holder of a master alarm permit, shall pay to the City of Tomball:

- (a) the permit application fee;
- (b) a late payment fee, if the person fails to pay the permit fee by its due date; and
- (c) other fees related to a permit, including a false alarm service fee assessed under Sec. 26.21 (*False Alarm Notification*).

Sec. 26.16 Grounds for Permit Denial

The City Manager may deny an application for a permit after at least 30 days notice if the applicant has:

- (a) made a false statement on the application;
- (b) made a false oral statement in connection with the application;
- (c) failed to pay a fee assessed under this chapter; or
- (d) had an alarm permit for an alarm site revoked and the violation resulting in the revocation remains uncorrected.

Sec. 26.17 Permit Revocation

The City of Tomball shall revoke an alarm permit if the City Manager determines after at least 30 days notice that:

- (a) an applicant has made:
 - (1) a false statement made on a permit application; or
 - (2) a false oral statement relating to a permit application; or
- (b) A permittee has:
 - (1) violated this chapter
 - (2) failed to pay a fee assessed under this chapter; or
 - (3) failed to maintain the alarm system to minimize false alarm notifications and ensure proper operation of the alarm system.

Sec. 26.18 Reinstatement of Permit

The City Manager may reinstate a permit revoked under Sec. 26.17 (*Permit Revocation*) if the City Manager determines that the applicant:

- (a) has paid the fees required under Sec. 26.15 (*Fees*); and
- (b) operates the alarm system in accordance with this chapter.

Sec. 26.19 Appeal From Denial of Revocation

- (a) If the City Manager denies an application for, or revokes an alarm permit, then the City Manager shall notify the applicant or permittee by certified mail, return receipt requested.
- (b) Not later than the 10th day after the affected person receives notice of an adverse action by the City Manager, the person may file a notice of appeal to the Municipal Court, including the reason for the appeal. Failure to file a timely appeal under this subsection results in the City Manager's action becoming final.
- (c) If an applicant or permittee files a timely appeal under this section, the City Manager's action is stayed.
- (d) The Municipal Court shall hear the appeal. The Municipal Court:
 - (1) shall make a decision based on the basis of a preponderance of the evidence presented;

- (2) shall render a decision not later than the 60th day after an appeal is filed; and
- (3) may affirm, reverse, or modify the action of the City Manager.

(e) The decision of the Municipal Court is final.

Sec. 26.20 Operation and Maintenance of an Alarm System

- (a) A permittee;
 - (1) shall maintain a premise containing an alarm system to ensure the proper operation of the alarm system;
 - (2) shall maintain the alarm system to minimize false alarm notifications;
 - (3) within one hour of notification by the city that an alarm system requires repair or inactivation, shall:
 - a. respond or cause an alarm system business representative to respond to repair or inactivate the malfunctioning alarm system;
 - b. provide access to the premises; or
 - c. provide security for the premises; and
 - (4) may not manually activate an alarm system except to report the occurrence of an event that the alarm system was designed to report.
- (b) A permittee with a local alarm shall adjust the mechanism to prevent an alarm signal from sounding for longer than 15 minutes after activation.
- (c) A permittee shall notify the City if the permittee relinquishes control of the alarm site and cancels the permit. If a permittee fails to notify the City under this section, the permittee shall pay fees associated with the permit, if any.

Sec. 26.21 False Alarm Notification

- (a) If an alarm system transmits more than three false burglar alarms or fire alarm notifications within a 12-month period, the permittee shall pay a service fee for the fourth and each subsequent false burglar alarm notification.

Residential Alarms

- (1) For each response for the first through the 3rd No Fee
- (2) For each response after the 3rd through the 5th \$25.00
- (3) For each response after the 5th through the 8th \$50.00

- (4) For each response after the 8th \$100.00

Commercial Alarms

- (1) For each response for the first through the 3rd No Fee
- (2) For each response after the 3rd through the 5th \$50.00
- (3) For each response after the 5th through the 8th \$75.00
- (4) For each response after the 8th \$100.00

- (b) If an alarm system transmits more than two false panic alarm notifications within a 12-month period, the permittee shall pay the maximum service fee permitted by state law, but not more than \$100, for the third and each subsequent false panic alarm notification.
- (c) A tenant holding an individual alarm permit shall pay a false alarm notification fee related to a transmission from the alarm system in the tenant's unit.
- (d) The permittee holding the master alarm permit holder shall pay a false alarm notification fee related to a transmission from an unoccupied unit or a unit for which a tenant has not obtained an individual alarm permit.
- (e) The City Manager may investigate and waive payment of a service fee assessed under this section.

Article III. Offenses and Penalties

Sec. 26.30 Offenses

- (a) A person commits an offense if the person operates, cause to be operated, or allows the operation of an alarm system:
 - (1) without a permit issued under this chapter;
 - (2) in violation of this chapter; or
 - (3) that automatically dials the 911 Emergency Communications System.

Sec. 26.31 Penalties

- (a) A person who fails to comply with this chapter commits a class C misdemeanor punishable by a fine of not more than \$500.00.
- (b) Each day or portion of a day during which a violation occurs or continues constitutes a separate offense.

- (c) In addition to a criminal penalty under this chapter, a person who operates, causes to be operated, or allows to be operated an alarm system without a valid permit shall be charged a fee for each Police Department or Fire Department response to the activation of an un-permitted alarm system.
- (d) In this chapter, a guilty plea, deferred disposition, deferred adjudication, or probation by a court of competent jurisdiction constitutes a conviction.
- (e) A person who makes a false statement on an application commits a violation of Section 37.10 (*Tampering with Governmental Record*) of the Texas Penal Code.”

Section 3. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

Section 4. It is the intent of the City that this Ordinance shall comply in all respects with the applicable provisions of the United States Constitution, the Texas Constitution, and the Charter of the City of Tomball. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Tomball, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 5. Any person, firm or corporation that knowingly violates any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tomball, Texas, and, upon conviction, shall be punished by a fine not to exceed five hundred (\$500.00) dollars for each offense.

Section 6. This Ordinance shall take effect immediately from and after its passage and the publication of the caption hereof, as provided by law and the City's home rule Charter.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21ST DAY OF JUNE 2010.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>NAY</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>
COUNCILMAN DRIVER	<u>NAY</u>

SECOND READING:

READ, PASSED AND ADOPTED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 6TH DAY OF JULY 2010.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN STOLL	<u>NAY</u>
COUNCILMAN BROWN	<u>AYE</u>
COUNCILMAN TOWNSEND	<u>AYE</u>

Gretchen Fagan
Gretchen Fagan, Mayor

ATTEST:

Doris Speer
Doris Speer, City Secretary