

ORDINANCE No. 116701

Law Department

CB 109680

The City of

AN ORDINANCE adding a new Section 11.84.345 to the Seattle Municipal Code to require the turning off of a false alarm of an automatic automobile alarm; amending Section 11.31.080; and adding a new Section 11.31.125 to provide penalties in connection therewith.

Search me

Honorable President:

Your Committee on _____

to which was referred the within Code report that we have considered the

Pass 3-0

Full Com

COMPTROLLER FILE No. _____

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| Introduced: <i>5-10-93</i> | By: <i>Pagelet</i> |
| Referred: <i>5-10-93</i> | To: <i>Public Safety</i> |
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| Third Reading: <i>MAY 17 1993</i> | Signed: <i>MAY 17 1993</i> |
| Presented to Mayor: <i>MAY 14 1993</i> | Approved: <i>MAY 14 1993</i> |
| Returned to City Clerk: <i>MAY 17 1993</i> | Published: |
| Vetoed by Mayor: | Veto Published: |
| Passed over Veto: | Veto Sustained: |

OK

Department

The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

President:

Committee on _____

was referred the within Council Bill No. _____

that we have considered the same and respectfully recommend that the same:

pass 3-0

Full Council OCT 8-0

Committee Chair

ORDINANCE 116701

1
2 AN ORDINANCE adding a new section 11.84.345 to the Seattle
3 Municipal Code to require the turning off of a false
4 alarm of an automatic automobile alarm; amending Section
5 11.31.080; and adding a new Section 11.31.125 to provide
6 penalties in connection therewith.

7 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

8 Section 1. There is added to the Seattle Municipal Code,
9 Chapter 11.85 (Ordinance 108200, Section 2 (part)) a new
10 Section 11.84.345 as follows:

11 11.84.345 Turning off automatic automobile alarms.

12 A. Duty: The owner of a vehicle equipped with an
13 automatic audible theft alarm device shall turn it off or
14 cause it to be turned off within five (5) minutes after the
15 alarm sounds, provided that if such a vehicle is owned by an
16 agency engaged in the business of renting motor vehicles to
17 the public (called a "Rental Agency") and is under lease, the
18 lessee of the vehicle shall turn off or cause the alarm device
19 to be turned off within five (5) minutes after the alarm
20 sounds.

21 B. Defenses: It is a defense that:

22 1. The alarm sounded because the vehicle was
23 damaged, or was the object of an unlawful entry or theft or an
24 attempt at an unlawful entry or theft; or

25 2. When the alarm sounded, the owner or operator
26 attempted to turn the alarm off, but was unable to do so
27 because the alarm equipment had been damaged or tampered with;
28 or

3. The alarm was deliberately sounded as a method
of summoning assistance in an emergency involving an injury or
threat to life by a person who is present at the site at the
time the police arrive; or

1 4. The vehicle was being used without the consent
2 of the owner, express or implied, and the owner had reported
3 its loss or theft to the police.

4 C. Allocation of responsibility between Rental Agency
5 and Lessee: The notice of civil infraction shall be placed
6 upon the vehicle or issued to the operator and charged to the
7 Rental Agency as owner unless the Rental Agency (a) shows that
8 the vehicle had been rented to another at the time of the
9 incident, (b) declares that the audible alarm equipment was in
10 good operating order at the time the vehicle was rented, and
11 (c) supplies the name and address of the lessee of the
12 vehicle. A lessee who receives a notice of civil infraction
13 as an operator or is charged on the basis of an identification
14 by the Rental Agency may secure the reinstatement or substitu-
15 tion of the Rental Agency in his or her place, if the Rental
16 Agency consents thereto at or before a hearing requested to
17 contest the determination, or the Rental Agency accepts in
18 writing responsibility for the failure of the alarm to be
19 turned off within five (5) minutes, and promises to make
20 payment of the monetary penalty.

21 Section 2. Seattle Municipal Code Section 11.31.080
22 (Ordinance 108200 Section 2 (11.31.080) as last amended by
23 Ordinance 109476, Section 2 (part)) is further amended as
24 follows:

25 11.31.080 Owner responsible for stopping, standing,
26 ((or)) parking, or alarm violation.

27 A. In any traffic infraction case involving a violation
28 of this title relating to the stopping, standing or parking of
a vehicle, or the sounding of an audible alarm, proof that the
particular vehicle described in the notice of traffic infrac-
tion was stopping, standing or parking or emitting an audible
alarm in violation of any such provision in this title
together with proof of registered ownership of the vehicle at

1 the time of the violation, shall constitute in evidence a
2 prima facie presumption that the registered owner of the
3 vehicle was the person who parked or placed the vehicle at the
4 point where, and for the time during which, the violation
5 occurred or was responsible for the failure to turn off the
6 audible alarm as required.

7 B. The foregoing stated presumption shall apply only
8 when the procedure prescribed in Section 11.31.030 has been
9 followed.

10 C. If a car rental agency declares that the vehicle was
11 under lease at the time of the violation, and supplies the
12 name and address of the lessee, there shall be a prima facie
13 presumption that the lessee so identified parked or placed the
14 vehicle at the point where the violation occurred, or was
15 responsible for the failure to turn off the audible alarm as
16 required.

17 Section 3. There is added to Seattle Municipal Code
18 Chapter 11.31 (Ordinance 108200, Section 2) a new Section
19 11.31.125 as follows:

20 **11.31.125 Civil Infraction -- Automobile Alarm;
21 Failure to Respond.**

22 A. The violation of or failure to comply with Section
23 11.84.345 is a civil infraction as contemplated by RCW Chapter
24 7.80, and subject as a Class 4 civil infraction to a maximum
25 penalty and a default amount of Twenty-three Dollars (\$23.00).

26 B. There shall be a maximum penalty and default amount
27 of Twenty-five Dollars (\$25.00) for failure to respond to a
28 notice of violation under Section 11.84.345 within fifteen
(15) days from the date of notice as contemplated by RCW
7.80.030(1) and 7.80.076(2)(K); a failure to appear at a
hearing requested by the recipient of the notice as contem-
plated by RCW 7.80.160(2) and RCW 7.80.070(2)(K), and a

1 failure to pay a penalty imposed under subsection A, as
2 contemplated by RCW 7.80.160(3).

3 C. If the court determines that a person has insuffi-
4 cient funds to pay the monetary penalty, the court may order
5 performance of a number of hours of community service instead.

6 Section 4. This ordinance shall take effect and be in
7 force thirty days from and after its passage and approval, if
8 approved by the Mayor; otherwise it shall take effect at the
9 time it shall become a law under the provisions of the City
Charter.

10 Passed by the City Council the 17 day of May,
11 1993, and signed by me in open session in authentication of
12 its passage this 17 day of May, 1993.

13 Ken Benson
14 President of the City Council

15 Approved by me this 19th day of May, 1993.

16 Norman B. Rice
17 Norman B. Rice, Mayor

18 Filed this 20th day of May, 1993.

19 By Margaret Carter
20 Deputy Clerk

(SEAL)

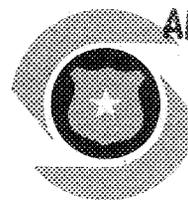
21 Published _____
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Seattle Police Department

Patrick S. Fitzsimons, Chief of Police
Norman B. Rice, Mayor

RECEIVED OMB

APR 20 1993



April 19, 1993

Honorable George Benson
City Council President
City of Seattle

VIA OMB

Dear Council President Benson:

We request the City Council's approval of the attached two companion ordinances. The first ordinance relates to automatic property alarm systems and makes a number of changes from the present false alarm ordinance. The second ordinance is new and relates to automobile alarms only. Both ordinances were developed in response to a Council SLINT designed to reduce the number of false alarms and contemporaneously alleviate noise problems in the City. A working group comprised of representatives from various departments (including the Law Department, Licenses and Consumer Affairs, the Municipal Court, the Police Department, OMB, and the Council staff) developed the completed work product.

As noted above, the proposed ordinance on automatic property alarm systems differs from the existing false alarm ordinance in a number of ways. The existing ordinance allows two "free" false alarms in a 6-month period before a \$125 fine is imposed for the third and each subsequent alarm. Under the present system, the City is required to file a suit, issue a summons and complaint in cases of nonpayment, and hold for a hearing. Under the new ordinance, civil infraction citations, with a corresponding fine up to \$50.⁰⁰, would be issued by Officers for every false alarm. This new system should allow for significant streamlining because the Law Department and the SPD Fiscal Section no longer have to be involved. The Municipal Court would schedule all Magistrate hearings and handle all payments and collections for non-payments or past-due fines. The False Alarm Compliance Report completed by officers under the old ordinance would be eliminated. Under the new ordinance several very specific obligations are imposed upon alarm companies (e.g. registration with Licenses and Consumer Affairs, maintenance of a listing of subscribers' names and the protected premises, maintenance of an alarm verification process, etc.), along with a sanction of up to \$250 for noncompliance. The new ordinance also contains a procedure for disregarding an alarm signal for

Honorable George Benson
April 19, 1993
Page two

non-residential properties after experiencing 6 false alarms in the previous 12 months. A final highlight addresses the noise problem: under the old ordinance, up to an hour of a continuous audible signal was allowed, while the new ordinance limits the audible signal to 10 minutes.

The new automobile alarm ordinance was made necessary by the growing proliferation of audible alarms installed in vehicles and the fact that no previous legislation set regulations for noise limits or provided any sanctions for false alarms in cars. The ordinance requires that registered owners of vehicles with automatic alarms provide for turning off of the alarm within 5 minutes of activation, and provides for a civil infraction citation to be issued (with a corresponding penalty of \$23.00) for violations. The ordinance specifies several circumstances which would constitute a defense, including: 1) the vehicle was damaged or was the subject of an unlawful entry or theft or attempted unlawful entry or theft; 2) the owner attempted to turn the alarm off but was unable to do so because the alarm equipment had been damaged or tampered with; 3) the alarm was deliberately sounded as a method of summoning assistance in an emergency involving an injury or a threat to life and the person summoning assistance is at the site when police arrive; and 4) the vehicle was being used without the consent of the owner, expressed or implied, and the owner had reported its loss or theft to the police. Finally, special provisions are made for the assignment of fines to a lessee in the case where the registered owner of a violator vehicle is a Rental Agency.

We appreciate your consideration of the enclosed ordinances.

Very truly yours,


Patrick S. Fitzsimons
Chief of Police

JP:lp

cc: Magistrate Tom Clark, Municipal Court
A/Chief P. A. Lamphere, Field Support Bureau
Major B. Wright, Crime Prevention Division
Major J. R. Pirak, Inspectional Services Division
Director R. Tibbs, Communication Division
Ada Ko, Law Department
Jorgen Bader, Law Department
Doug Carey, OMB
Budget Policy Section

(Ref. JP LA04133)

COMMENTS -- AUTO ALARM ORDINANCE

The auto alarm ordinance requires the owner (or in the case of a rental car, the lessee) to turn off an audible auto alarm or have it turned off within five (5) minutes after it sounds. It imposes a penalty for violation of \$23. The ordinance is intended to reduce unnecessary noise that has been the subject of complaints, particularly during nighttime hours.

The ordinance would be enforced in the same manner as parking tickets through the municipal court. The \$23 penalty reflects the current amount of parking tickets. The ordinance establishes a civil offense only. The ticket would not be reported to the Department of Licenses as a vehicle offense and it would not establish any sort of criminal prosecution. The ordinance applies to audible alarms only; it would not pertain to silent alarms, such as those sometimes used in armored vehicles.

Duty to shut off alarm

Subsection A of proposed Section 11.84.345 establishes a duty to turn off an audible alarm. Most newer cars have automatic shut-off devices. The committee determined that most of the shut-off devices go silent within three (3) minutes and that the primary purpose of the alarm -- scaring off thieves -- is accomplished within five minutes.

The three elements of the offense are: (1) the defendant is the owner of the vehicle, or in the case of a car rental, the lessee; (2) the alarm of the vehicle sounded; and (3) the sound continued for five minutes or more. The police officer's notice of violation is presumed to be correct. If the owner did not contest, the City would secure judgment by default. If the owner were to request a hearing and appear, the City would need to prove the three elements outlined above in order to prevail. An owner could defend by denying any element, e.g.:

As to element (1), ownership, the owner might show that he or she had sold the car and the Department of Licenses had failed to transfer title;

As to element (2), the owner might show that the officer was mistaken and had cited the wrong vehicle, that his or her car has no alarm or that it did not go off, that his or car was locked in a garage or parking lot of a multi-family structure and that the car with offending alarm must have been another's car.

As to element (3), the owner might show that alarm went silent within five (5) minutes, and that the citing officer had a watch that was too fast, or mistakenly tacked on time from another car in the vicinity.

The magistrate would have the police officer's Notice of Violation and could evaluate the defendant's testimony in light of the report and common experience. If the magistrate believed by a preponderance of the evidence that the officer's Notice of Violation was correct, the court would enter judgment against the defendant.

The responsibility is placed upon the owner and, in the case of commercial rentals, upon the lessee, whenever the owner or lessee allows another to use the vehicle. This follows the pattern of parking violations. The owner has control over the equipment, and the ability to select equipment with a timed automatic turn-off; and the owner in granting permission can instruct the operator of the vehicle about the manner of turning off the alarm.

Defenses

Subsection B establishes affirmative defenses. A defense allows an accused to secure a judgment in his or her favor notwithstanding that the accused committed the act defined as an offense. The defendant has the burden of providing proof that the defense applies. Thus, a magistrate would render judgment in favor of the defendant even though the City established the three elements of infraction if the magistrate also believed that the defendant had established one or more of the affirmative defenses.

The Committee recommends four defenses.

1. The first defense, a theft or an attempt at unlawful entry, reflects considerations of public policy and of fairness. Auto alarms serve a valid police purpose in scaring off thieves and vandals, in alerting owners of the disturbance, and in assisting the police to find a vehicle that was the subject of theft or vandalism. An alarm that sounds under such circumstances is fulfilling its purpose; the alarms that cause the most annoyance are those that go off and keep sounding because heavy vehicles in passing traffic cause vibrations that disturb the alarm mechanism, because a person innocently leans against the car or walks too closely to it, or because a car parking in an adjoining space taps the bumper of the alarm-equipped vehicle lightly. The majority of the committee felt that it would add insult to injury to issue a notice of violation for a car alarm infraction to an owner whose car had just been damaged or broken into for a noise violation and faced a large repair bill or loss of valuable equipment. Such a citation would cause a loss of

confidence in government or its process that might impair the victim's/owner's cooperation with the criminal investigation, with filing reports, or an eventual prosecution.

A portion of the committee felt that the words "attempt at an unlawful entry of theft" should be defined more precisely (with perhaps a reference to the Criminal Code's Section 12A.04.120). The majority of the committee felt that "attempt" has a common law meaning of an action to commit a crime with the requisite intent.

2. The second defense, that the owner was unable to turn off the alarm, reflects concepts of culpability. The committee felt that an innocent owner ought not be held responsible for a defective alarm that the owner despite his or her best efforts could not turn off without using specialized equipment or knowledge. It is the obligation of an owner to maintain the vehicle and its equipment in good working order. Nonetheless, equipment can become damaged without an owner's knowledge, so that an owner who follows the procedures in the owner's manual to turn off the alarm is helpless.

3. The third defense, use of the alarm to call for help, shows an evaluation that prevention of injury or saving life in a bona fide emergency takes precedence over the noise nuisance. It is rarely likely to arise. One member of the committee member recalls a television show in which an individual suddenly stricken or injured fell against a car that had an alarm, set off the alarm, and the sound of the alarm led to someone coming to his aid, discovering his condition, and calling an aid car.

4. The fourth defense was adopted in light of City of Seattle v. Stone, 410 P.2 583, 67 Wn.2d 886 (1966). The City's traffic code had made the owner of a vehicle responsible for parking tickets, irrespective of whether the vehicle was used with the owner's consent or not. The City cited Clifford Stone on 20 overtime parking tickets, and, when he did not testify in his own behalf, found him guilty. Stone appealed, arguing that the ordinance unconstitutionally denied him to the opportunity to defend by showing that he had not consented to the use of his car when the tickets were incurred. The Washington Supreme Court ruled that the City's traffic code can make vehicle ownership prima facie proof of responsibility for a parking ticket, but not conclusive proof. A defendant ought to have the opportunity to show that the vehicle was being used without his or her consent, express or implied, e.g., that the car had been stolen.

Commercial Car Rentals

Subsection C reflects the manner that parking tickets are handled with commercial rental of vehicles pursuant to RCW

46.63.070 (5)(b). RCW 46.63.070(5)(b) states, in part, as follows:

"... the lessee of a vehicle shall be considered to be the person to whom a notice of standing, stopping, or parking violation has been issued while the vehicle was leased or rented under a bona fide commercial lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner, if the lease agreement contains a provision prohibiting anyone other than the lessee from operating the vehicle. Such a lessor shall, upon the request of the municipality issuing the notice of infraction, supply the municipality with the name and driver's license of the person leasing the vehicle at the time of the infraction."

Subsection C would make the rental agency responsible unless it supplied information to the City that the vehicle was rented to another at the time and that the audible alarm equipment was in good operating order at the time, and the rental agency supplied the name and address of the lessee. If the rental agency did so, the City would cite the lessee and the police officer's Notice of Violation and the rental agency's response would establish a prima facie case against the lessee. If the equipment were at fault, the lessee could substitute the rental agency as a defendant if the rental agency were to consent or acknowledge its responsibility and offer to make payment.

The Committee discussed the situation of commercial rentals at length. The offense is civil. The court cases on parking tickets uphold municipal ordinances that hold commercial car rental agencies strictly liable for parking tickets, e.g.:

City of Chicago v. Hertz Commercial Leasing Corp., 71 Ill.2d 333, 375 N.E.2d 1285 (1978), cert. den. 439 U.S. 929, 99 S.C. 315, 58 L.Ed.2d 322 (1978) (upholding a Chicago ordinance that made the registered owner prima facie responsible for parking violations, but recognized as a defense an operator's use of a car after the lease term had expired.)

Kansas City v. Hertz Corp., ___ Mo. ___, 499 S.W.2d 449 (1973).

Commonwealth v. Minicost Car Rental, Inc. 354 Mass. 746, 242 N.E.2d 411 (1968).

See also: Ballard v. Wilson, 856 F.2d 1568 (5th Cir. 1988). Other cases make clear that the presumption is prima facie, not

conclusive, e.g., Red Top Drive-Ur-Self v. Potts, 227 Ark. 627, 300 S.W.2nd 261 (1957).

The arguments for the resolution in the draft ordinance are:

1. It reflects the accommodation in RCW 46.63.070 and the state policy which it manifests, and it provides consistency with the manner that parking tickets are processed. Other states also have statutes similar to Washington's;

2. The rental agency does not have control over the vehicle or the right to control the vehicle at the time that the violation occurs. The violation is the failure to turn off the alarm. The rental agency would not know where the vehicle is or that its alarm has sounded; or, if it did know, under the terms of the lease, it would not have the ability to retake possession. The lessee has control and the better opportunity to turn off the alarm;

3. Where there is a valid defense, a lessee is more likely to raise and present it. The lessee has the better opportunity to be there when the incident occurs, and if responsible for the violation, the lessee would have the incentive and opportunity to present the facts to the magistrate by letter or affidavit, if not by personal appearance. By comparison, if the lessee did not tell the rental agency about the violation, it would probably first learn of the notice of violation long afterward; the notice could probably be one of several notices; and if the lessee had not told the rental agency of the ticket, the agency would have a difficult time making a timely request for a hearing, even when it has valid defense.

4. Many rental agencies are located outside Seattle. The recommended approach will elicit cooperation from all the agencies without imposing an unnecessary economic burden. If the rental agencies were held responsible for noise violations of lessees, as a practical matter, the City would be enforcing civil judgments primarily against those in King County. It would put them at a competitive disadvantage as to rental agencies more distant.

Presumptions

Section 2 amends Section 11.31.080 to make the presumptions applicable as to parking tickets apply to the auto alarm ordinance. Thus, the notice of violation and proof of registered ownership of the vehicle is sufficient to establish a case that shifts the burden to the defendant to rebut the City's case or establish an affirmative defense. Subsection C provides for the case of commercial rentals.

Infractions

Section 3 defines the infractions. Subsection A sets the penalty at \$23 for failure to turn off the alarm. Subsection B declares as separate infractions, subject to a maximum penalty of \$25, the failure to respond to a violation within fifteen (15) days; the failure to appear at a hearing if a defendant requests a hearing; and the failure to pay a penalty. The false alarm ordinance in Section 10.08.180 C provides for similar infractions and penalties. Subsection C allows a person with insufficient funds to make payment to provide community service instead. All three subsections accord with RCW Chapter 7.80.

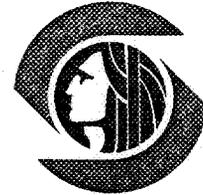
93-58

City of Seattle

Executive Department—Office of Management and Budget

Diana Gale, Director
Norman B. Rice, Mayor

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SEATTLE CITY ATTORNEY



OK
JG
4/23/93

April 21, 1993

The Honorable Mark Sidran
City Attorney
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING DEPARTMENT Police

SUBJECT: AN ORDINANCE adding a new section 11.84.345 to the Seattle Municipal Code to require the turning off of a false alarm of an automatic automobile alarm; amending Section 11.31.080; and adding a new Section 11.31.125 to provide penalties in connection therewith.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMB. Any specific questions regarding the legislation can be directed to Doug Carey at 684-8067.

Sincerely,

Norman B. Rice
Mayor

by

DIANA GALE
Budget Director

DG/dc/rs

Enclosure

cc: Chief, SPD

TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Margaret Paezler

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
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| _____ | _____ |

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO:

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PRESIDENT'S SIGNATURE

