

COMMITTEE ASSIGNMENTS

CHAIR

Public Safety Committee

MEMBER

Anti-Graffiti Policy Committee
Finance & Personnel Committee
Steering & Rules Committee



ROBERT G. DONOVAN

Alderman, 8th District

December 18, 2009

To the Honorable, the Common Council

Dear Members:

Re: Common Council File 090864

Attached are written objections to File 090864 for the following private alarm system businesses:

Robert Sherman, Agent for "Monitronics International, Inc.", Private Alarm System Business renewal application with change of officer for "Monitronics International, Inc." at 2350 Valley View Lane, Dallas, TX.

Robert Sherman, Agent for "Monitronics Security, LP", Private Alarm System Business renewal application with change of officer for "Monitronics Security, LP" at 2350 Valley View Lane, Dallas, TX.

Aaron Wahrsager, Agent for "Nationwide Digital Monitoring Company", Private Alarm System Business renewal application with change of officer for "Nationwide Digital Monitoring Company" at 75 W. Merrick Road, Freeport, NY. (committee vote: 3 ayes and one no – Ald. Puente)

Steven Zolman, Agent for "Pinnacle Security, LLC", Private Alarm System Business renewal application with change of member for "Pinnacle Security" at 1290 S. Sandhill Road, Orem, UT. (committee vote: 3 ayes and one no – Ald. Puente)

This matter will be heard by the full Council at its December 22, 2009 meeting. Pursuant to City Ordinances, a roll call vote will be taken to confirm that all members have read the attached objections.

Respectfully,

A handwritten signature in dark ink, appearing to read "Robert G. Donovan", written over a faint circular stamp.

Robert G. Donovan, Chair
Public Safety Committee

Writer's Direct Dial: 414.277.5745
E-Mail: booker.coleman@quarles.com

December 17, 2009

CITY OF MILWAUKEE
09 DEC 17 PM 4:43
RONALD D. LEONHARDT
CITY CLERK

VIA HAND DELIVERY

Common Council Members
c/o Office of the City Clerk
City Hall, Room 205
200 East Wells
Milwaukee, WI 53202

**RE: Monitronics International, Inc.'s and
Monitronics Security, LP's License Renewal Applications
City of Milwaukee File No. 090864**

Dear Common Council:

I am writing on behalf of Monitronics International, Inc. and Monitronics Security, LP (collectively "Monitronics"), objecting to the recommendation of the Public Safety Committee ("PSC") that the Council deny Monitronics' applications for renewal.¹ This statement is made pursuant to Section 85-5-2 of the Milwaukee Code of Ordinances.

Monitronics has a longstanding history in Milwaukee of providing quality and reliable security monitoring services through cooperation with city officials. Since 1998, Monitronics has continuously held a license to operate as a private alarm systems business in Milwaukee. Over the years, Monitronics has worked closely with police alarm operators to minimize non-verified alarms. Monitronics representatives proactively called the police alarm operators to determine if any non-verified alarms were attributable to Monitronics and, if so, to determine a means and method to remedy the situation. Because of Monitronics' proactive approach to identifying and addressing non-verified alarms, Monitronics has not received a municipal citation since November 11, 2004. Monitronics further has never been named in any complaint filed before the Wisconsin Department of Agriculture, Trade, and Consumer Protection.

Given the foregoing facts, it is all the more surprising that on December 11, 2009, the PSC submitted a written recommendation to the Council to not renew Monitronics alarm system

¹ Because the PSC's findings of fact, conclusions of law, and recommendations for each entity are identical, hereinafter reference to the same is collective.



411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497
Tel 414.277.5000
Fax 414.271.3552
www.quarles.com

Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

Writer's Direct Dial: 414.277.5745
E-Mail: booker.coleman@quarles.com

December 17, 2009

VIA HAND DELIVERY

Common Council Members
c/o Office of the City Clerk
4545 North Marlborough Drive
Shorewood, Wisconsin 53211

CITY OF MILWAUKEE
09 DEC 17 PM 4:45
RONALD D. LEONHARDT
CITY CLERK

**RE: Monitronics International, Inc.'s and
Monitronics Security, LP's License Renewal Applications
City of Milwaukee File No. 090864**

Dear Common Council:

I am writing on behalf of Monitronics International, Inc. and Monitronics Security, LP (collectively "Monitronics"), objecting to the recommendation of the Public Safety Committee ("PSC") that the Council deny Monitronics' applications for renewal.¹ This statement is made pursuant to Section 85-5-2 of the Milwaukee Code of Ordinances.

Monitronics has a longstanding history in Milwaukee of providing quality and reliable alarm monitoring services through cooperation with city officials. Since 1998, Monitronics has continuously held a license to operate as a private alarm systems business in Milwaukee. Over the years, Monitronics has worked closely with police alarm operators to minimize non-verified alarms. Monitronics representatives proactively called the police alarm operators on a quarterly basis to determine if any non-verified alarms were attributable to Monitronics and, if so, to determine a means and method to remedy the situation. Because of Monitronics' proactive approach to identifying and addressing non-verified alarms, Monitronics has not received a municipal citation since November 11, 2004.

Given the foregoing facts, it is all the more surprising that on December 11, 2009, the PSC recommended that the Council not renew Monitronics' alarm system business licenses. Had Monitronics been given the opportunity to exercise its constitutional rights at the PSC hearing, the outcome would have been different. As it stands now, this statement is Monitronics'

¹ Because the December 11, 2009 PSC's findings of fact, conclusions of law, and recommendations for Monitronics International, Inc. and Monitronics Security, LP are identical, hereinafter reference to the same is made collectively.

first opportunity to exercise its due process rights to be heard in a "meaningful manner." *Brown County v. Shannon R.*, 2005 WI 160, ¶ 64, 286 Wis. 2d 278, 706 N.W. 2d 269 (2005).

On December 11, 2009, Alderman Robert G. Donovan submitted findings of fact and conclusions of law to the Council in support of the PSC's recommendation that the Council not renew Monitronics' licenses. The PSC's findings of fact are incomplete and inaccurate. Specific facts absent from the PSC's report are as follows:

1. Several months before the December 10, 2009 hearing, Monitronics took proactive steps to solve the issues resulting in the violations of Section 105-75-14(g) of the Milwaukee Code of Ordinances. Those measures have proved successful as zero non-verified alarms have been dispatched by Monitronics since October 2, 2009. (Ex. B – Affidavit of Bob Sherman ¶ 7);
2. Monitronics is not responsible for the citation service issues referred to in the PSC's findings. At all relevant times, Monitronics' registered agent in Wisconsin has been CT Corporation System, 8025 Excelsior Drive, Suite 200, Madison, Wisconsin 53717. The Milwaukee Police Department is, or should be, aware that CT Corporation is Monitronics registered agent based on its past service municipal citations on Monitronics, through CT Corporation, pursuant to Wis. Stat. §§ 180.0504(2) and 801.11(5). (Ex. A – Service of Process Transmittal Form);
3. Contrary to the record before the Council, Monitronics is a separate and distinct legal entity from Badgerland Alarm, LLC, the entity that Ms. Johnson filed a Department of Agriculture, Trade and Consumer Protection complaint against. (*Id.*); and
4. Monitronics is not affiliated with the majority of the telephone numbers the PSC found listed on Ms. Johnson's so-called log of harassing and annoying calls. Nor, did Monitronics call Ms. Johnson to harass or annoy her. Monitronics called Ms. Johnson to collect on months of back payments and to provide customer service in the normal course of business payments for which Ms. Johnson was months in arrears. Monitronics did not place more than three calls on any given date to Ms. Johnson, and only placed that many if she did not answer the phone when ringed by Monitronics' automatic dialer. (*Id.*)
5. The health, safety and welfare of the citizens of the City of Milwaukee will not be protected by the Council's denial of Monitronics' applications for license renewal. In fact, the opposite is true. Monitronics provides

alarm monitoring services for 2,547 customers in Milwaukee. Each of these customers will be without vital alarm monitoring services if Monitronics' licenses are not renewed.

The PSC's recommendation not to renew Monitronics' licenses based on incomplete and/or inaccurate facts is arbitrary and without reason. Furthermore, as explained below, the PSC's failure to adhere to procedural safeguards at the December 10, 2009 hearing fundamentally deprived Monitronics of its constitutional right to due process.

The Council should exercise its sound discretion and judgment to reject the PSC's recommendation for non-renewal, and to grant Monitronics' applications to renew its alarm system business licenses.

I. Factual Background

Monitronics is engaged in the business of providing alarm monitoring services. (Ex. B ¶ 3.) From a central monitoring station, Monitronics monitors security systems for more than 700,000 customers nationally, including 2,547 customers in the Milwaukee market. (*Id.*) Monitronics is responsible for dispatching proper authorities based upon alarm signals it receives from its customers' monitored security systems. (*Id.*)

Monitronics has been licensed to operate as a private alarm security business since 1998. (*Id.* B ¶ 2.) During the last decade, Monitronics worked closely with local authorities to reduce the number of non-verified dispatch calls in violation of municipal ordinances. Representatives of Monitronics called police alarm operators on a quarterly basis to investigate the quality of Monitronics' verification process and to address means and methods for improving the system. Because of Monitronics cooperation and approach to reducing the number of non-verified alarms, the City of Milwaukee police department previously informed Monitronics that it would not issue municipal citations against the company so long as Monitronics continued to promptly address non-verified alarm issues as they arose. (*Id.*)

Monitronics expends significant resources to improve the quality of its alarm monitoring services and the accuracy of its verification process. In 2009, Monitronics identified 4,691 false alarms signals received from Milwaukee area customers. (Ex. ¶ 5.) In recent months, Monitronics has reduced the number of non-verified dispatch calls attributed to its system to zero. (*Id.* ¶ 7.)

The reduction in non-verified dispatch calls in Milwaukee to zero partially is related to Monitronics, over \$4 million investment spent to upgrade its automation system. (*Id.* ¶ 6.) Monitronics upgrade addressed a prior gap in its verification process created when Monitronics acquired accounts opened by independent dealers. (*Id.* ¶ 6.) The majority of these accounts were opened with incorrect information. (*Id.*) Specifically, the contact number for the dispatch

was at the customer level and often to municipal authorities with the upgraded system, Monitronics centralized all dispatch numbers with its central alarm monitoring system, setting the default number for all customers as its private first responder service. (*Id.*) Also, Monitronics changed its phone switch system, prohibiting direct dispatch to police as a first response. (*Id.*)

Monitronics also enhanced its verification process, contacting customers after an alarm signal on two separate telephone lines to verify the alarm. In addition to verifying by telephone, Monitronics contracted with Twin City Security Inc., on September 20, 2004, to provide first responder services, including on-site inspection to verify whether an attempted or actual crime or fire has occurred at the alarm site before Monitronics relays the alarm signal to dispatch for the proper authorities.

Monitronics' current licenses expire December 31, 2009.² (Ex. C. – Report of the Public Safety Committee.) On October 29, 2009, Monitronics filed a timely application to renew its licenses with the Office of the City Clerk. (*Id.*) Notwithstanding Monitronics' cooperation with police alarm operators and successful reduction in the number of non-verified dispatch calls, on November 23, 2009, Monitronics received a Committee Meeting Notice setting forth possible bases for denying Monitronics' license renewal applications. (*Id.*) The bases included, among other, a police report citing violations of Section 105-75-14(g) and a single customer complaint. A hearing on the matter was set for December 10, 2009 before the PSC. (*Id.*)

At the December 10, 2009 hearing, an officer from the licensing investigation unit read the police reports into the record. Ms. Johnson also read her consumer complaint into the record. Contrary to Section 85-4-2 of the Milwaukee Code of Ordinances, Monitronics was not given the opportunity to cross-examine either objector or to subpoena additional witnesses to testify on its behalf. Rather Monitronics' only opportunity to challenge the veracity of the objectors' statements was through limited rebuttal in response to questions from the PSC. Based upon the testimony and written reports, the Public Safety Committee summarily recommended that Monitronics' applications for renewal be denied. The PSC did not distinguish between, or even recognize, the separateness of the Monitronics entities or Monitronics and its independent dealers; rather the committee attributed "the acts of one, to the acts of all" without regard for corporate formalities.

II. Argument

Monitronics' fundamental rights were denied at the December 10, 2009 hearing: First, Monitronics' right to be heard and the right to cross-examine its objector. *See Milwaukee Dist. Council 48 v. Milwaukee County*, 2001 WI 65, ¶ 51, 244 Wis. 2d 333, 627 N.W.2d 866 (2001) (finding "property interests protected by procedural due process extend well beyond actual

² Paragraph 1 of the PSC's findings of fact incorrectly states that Monitronics' licenses expire at midnight, December 31, 2007.

ownership of real estate, chattels, or money.”) The right of a party to be heard in a “meaningful manner” is a fundamental due process right. *Brown County v. Shannon R.*, 2005 WI 160, ¶ 64, 286 Wis.2d 278, 706 N.W.2d 269 (2005). Likewise, due process requires that a party be afforded the right to confront and cross-examine adverse witnesses. *Milwaukee Dist. Council 48*, 2001 WI 65, ¶ 51, 244 Wis. 2d at 333, 627 N.W.2d at 866. Wisconsin Courts have routinely enforced due process rights in adversarial administrative proceedings such as the ones at issue here. See, e.g., *Nova Serv., Inc. v. Village of Saukville*, 211 Wis.2d 691, 565 N.W.2d 283 (Ct. App. 1997) (reversing village board’s decision to cause group home to cease operations for lack of due process).

The PSC improper denial of Monitronics’ request to present rebuttal facts at the December 10, 2009 hearing deprived Monitronics of its right to due process. The Council should reject the PCS’s recommendation, and grant Monitronics application for renewal in light of these constitutional violations.

(a) There is No Service of Process Issue Relating to Monitronics.

Monitronics is a corporation duly authorized to do business in the State of Wisconsin that can be served with process through its registered agent CT Corporation in Madison, Wisconsin. Pursuant to Section 180.0504(2) of the Wisconsin Statutes, service of process on a corporation is complete upon sending a copy of the initial pleading by certified mail to the corporation’s registered agent.

As recently as November 11, 2004, the Milwaukee Police Department served municipal citations upon Monitronics through certified mail to CT Corporation. While it is not clear what service issues the officer from license investigation unit was referring to in the December 10, 2009 hearing, what is clear is that Monitronics was denied the opportunity to cross-examine its objector, as permitted under Section 85-4-2 of the Milwaukee Code of Ordinances, to determine the basis for the officer’s claim.

(b) Monitronics Remedied the Technical Issues Causing the Non-verified Burglar Alarm Calls Cited in Police Reports Presented to the Public Safety Committee.

The circumstances that led to the police reports against Monitronics has been remedied. By way of brief background, Monitronics acquired 1,300 wholesale monitoring accounts within the Milwaukee market in January 2009. One thousand three hundred wholesale monitoring accounts are dealer accounts for which Monitronics agrees to provide alarm monitoring services. Because the contract monitoring accounts were created by independent dealers, Monitronics did not have control over the data entered. Further, several of the 1,300 wholesale monitoring accounts Monitronics acquired contained features that directly contributed to increased numbers of non-verified dispatch calls. Also, Monitronics did not have the means to block police calls placed through its security system from the phone switch.

To remedy the issues, Monitronics invested \$4 million to upgrade its automation system. Following the upgrade, the number of non-verified responses has decreased dramatically:

<u>Alarms Dispatched</u>	<u>Non-verified</u>
January 2009 – April 2009	46
May 2009 – September 2009	31
October 2009 – present	1

Under the upgraded automation system, there have been zero incidents of non-verified dispatch calls since October 2, 2009.

(c) Ms. Minnie Johnson's Testimony was Inaccurate and Incomplete.

Monitronics was denied its constitutional and regulatory right to cross-examination Ms. Johnson as an objector at the December 10, 2009 hearing. Had Monitronics not been denied due process it could have exposed the factual gaps and inaccuracies in Ms. Johnson's testimony that are now a part of the record before the Council.

Ms. Johnson testified before the Public Safety Committee that over the course of several months Monitronics called her from 17 different numbers with the aim to harass and annoy her. Wrong. Thirteen of the numbers contained in Ms. Johnson's so-called log of harassing and annoying calls are not related to Monitronics whatsoever:

Ms. Johnson was in arrears on her payments to Monitronics. Monitronics placed thirty-five (35) calls to Ms. Johnson over the course of three months. Monitronics uses an automated dialer that calls customers up to three times today. Monitronics also contracts with a collection agency Berlin Wheeler; however, Berlin Wheeler is a separate corporate entity with no legal affiliation to Monitronics. Ms. Johnson fell into arrears in June of 2007 with payments on her account and was never current again. During this time, Monitronics placed calls to Ms. Johnson to collect on the back-payments. Monitronics also engaged a third-party firm, Berlin Wheeler, in the collection effort.

The genesis of the dispute with Ms. Johnson appears to be customer confusion arising out of the alarm monitoring purchase agreement Monitronics executed with its independent dealer ("Badgerland"). On May 24, 2006, Monitronics purchased from Badgerland rights to certain alarm monitoring contracts and the right to purchase more in the future. Pursuant to contract, Monitronics assumed the monitoring and non-warranty servicing responsibilities of Badgerland under its alarm monitoring agreements.

On September 15, 2006, Badgerland sold Ms. Johnson an alarm system. Badgerland and Ms. Johnson executed an Alarm System Sales and Installation Agreement and an Alarm Monitoring Agreement. On September 29, 2006, Monitronics purchased the alarm monitoring

agreement for Ms. Johnson from Badgerland. On October 2, 2006, Monitronics notified Ms. Johnson of this change via telephone and U.S. mail.

Nearly from the start, Ms. Johnson balked at paying the sales tax expressly provided for under the terms of her contract with Badgerland in large, bolded print:

3. SERVICE FEES & TERMS OF AGREEMENT: This Agreement shall continue for an initial term of three (3) years, unless earlier terminated pursuant to the provisions hereof, and shall thereafter automatically renew on a month-to-month basis, unless either party gives proper written notice of cancellation to the other party at least thirty (30) days prior to the end of the initial term. During any renewal period, Customer may cancel this Agreement upon thirty (30) days proper prior written notice. For you own protection and to prevent unauthorized cancellations, "proper written notice" means a signed written notice including name, address, account number, and account password. *Customer agrees to pay the total monthly fee above plus all sales, service, property, use and local taxes; any permit fees, any false alarm charges, telephone charges, return check charges, or Late Charges, if applicable, whether imposed on Company or Customer, Company may increase Total Monthly Fee up to 5% during the initial or any renewal term no more than once annually without prior notice. Return check charges are \$25.00 or 5% of the face value of the check, whichever is greater.*

(Ex. D – Badgerland Alarm LLC Monitoring Agreement) (Emphasis added.) For over one year, Ms. Johnson wrote numerous letters alleging breach of contract and consumer protection complaints against Badgerland.

Ms. Johnson's first complaint against Monitronics arose in March, 2007. Ms. Johnson called Monitronics stating that she had submitted a complaint against Badgerland regarding being charged for sales tax. Over the next several months and dozens of customer service calls, representatives of Monitronics worked with Ms. Johnson to attempt to resolve her dispute with Badgerland over the sales tax issue. On August 23, 2007, Monitronics representatives offered to waive a \$.99 rate increase in an attempt to resolve the sales tax issue. Ms. Johnson declined the waiver of the rate increase.

The sales tax issue persisted through the Ms. Johnson's entire history as a Monitronics' customer. On September 15, 2009, Ms. Johnson sent Monitronics her written notice of cancellation. On that date, Ms. Johnson's account was \$194.93 past due. Ultimately to resolve matters, on November 21, 2009, Monitronics issued Ms. Johnson a credit in the full amount of

Common Council Members
December 17, 2009
Page 8

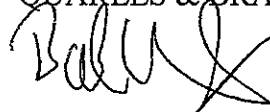
the past due balance. On December 15, 2009, Monitronics agreed to settle all issues with Ms. Johnson.

III. Conclusion

Monitronics has a longstanding record of providing quality and reliable alarm monitoring services in the Southeast Wisconsin market. Monitronics provides alarm monitoring services for 2,547 customers in Milwaukee that rely upon Monitronics' services for their health, safety and welfare. Each of these customers will be without vital alarm monitoring services if Monitronics' licenses are not renewed. The Council should exercise its sound discretion and judgment to reject the PSC's recommendation for non-renewal, and to grant Monitronics' applications to renew its alarm system business licenses.

Very truly yours,

QUARLES & BRADY LLP



Cory Nettles

Booker T. Coleman Jr.

BC:hs
Enclosures

Service of Process Transmittal Form
Madison, Wisconsin

11/23/2004

Via Federal Express (2nd Day)

TO: Robert R Sherman
Monitronics International, Inc.
12801 Stemmons Freeway
Suite 821
Dallas, TX 75234

Phone: (972) 243-7443 ex:

RE: PROCESS SERVED IN WISCONSIN

FOR Monitronics International, Inc. Domestic State: Tx

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION: To: Monitronics International, Inc. Re: 2933 N. 27th Street
2. DOCUMENT(S) SERVED: Milwaukee Municipal Citation
3. COURT: None Indicated.
Case Number Citation Number 5881501 3
4. NATURE OF ACTION: Milwaukee Municipal Citation regarding the above premises.
5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Madison, Wisconsin
6. DATE AND HOUR OF SERVICE: By Regular mail on 11/23/2004 with Postmarked Date 11/17/2004
7. APPEARANCE OR ANSWER DUE: January 4, 2005 at 8:30 a.m.
8. ATTORNEY(S): Police Department
Police Administration Building
P. O. Box 531
Milwaukee, WI 53201-0531

9. REMARKS:

SIGNED CT Corporation System

PER Dawn Pederson
ADDRESS 8025 Excelsior Drive
Suite 200
Madison, WI 53717
SOP WS 0006792330

Information contained on this transmittal form is recorded for CT Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.

AFFIDAVIT OF ROBERT N. SHERMAN

The undersigned, Robert N. Sherman, being first duly sworn on oath deposes and states that:

1. I am the Vice President of Operations of Monitronics International, Inc. and Monitronics Security, LP (the "Monitronics"). I am also agent for Private Alarm System Business renewal applicant in Milwaukee, Wisconsin.

2. Monitronics has been a licensed Private Alarm System Business in the City of Milwaukee at least from 1998.

3. Monitronics is in the business of providing alarm monitoring and related services.

4. Monitronics is responsible for dispatching the appropriate fire and police authorities based on alarm signals it receives from monitored alarm systems.

5. In 2009, Monitronics identified 4,691 alarm signals received from Milwaukee area customers, 76 of which we dispatched non-verified alarms. 70 of the non-verified alarms that we dispatched related to contract monitoring accounts that Monitronics acquired from independent dealers in 2009.

6. Monitronics spent over \$4,000,000 to upgrade its automation system in part to solve the issues relating to contract monitoring accounts and non-verified alarms. The upgrade changed the initial dispatch number for all accounts from fire and police authorities to Monitronics private first responder's number. Monitronics also changed its phone switch system to prohibit initial non-verified dispatch calls to local police.


7. Since October 2, 2009, Monitronics has not had any non-verified dispatch calls.

Dated this 17 day of DEC, 2009.

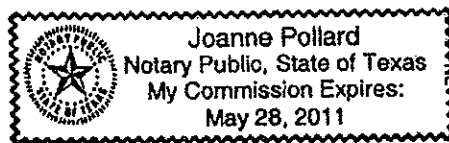


Robert N. Sherman
Monitronics International, Inc. and
Monitronics Security, LP

Subscribed and sworn to before me
this 17th day of December, 2009.


Notary Public
My Commission: 5/28/2011

QB9407536.1



COMMITTEE ASSIGNMENTS

CHAIR

Public Safety Committee

MEMBER

Anti-Graffiti Policy Committee

Finance & Personnel Committee

Steering & Rules Committee



ROBERT G. DONOVAN

Alderman, 8th District

Date: December 11, 2009

To: All Members of the Milwaukee Common Council

From: The Public Safety Committee

Re: Report of the Renewal Application of Robert N. Sherman, as Agent for a Private Alarm System Business renewal applications for Monitronics International, Inc., located at 2350 Valley View Lane, Dallas, Texas.

FINDINGS OF FACT

1. Robert N. Sherman (hereinafter the "Licensee") is the holder of a Private Alarm System Business licenses for Monitronics International, Inc. doing business at 2350 Valley View Lane, Dallas, Texas. Said license expires at midnight, December 31, 2007.
2. An application to renew said license was timely filed with the Office of the City Clerk on October 29, 2009.
3. Pursuant to Chapter 105-75 of the Milwaukee Code of Ordinances, the application was referred to the Milwaukee Police Department for investigation. The Milwaukee Police Department responded with a report that could form the basis of non-renewal or suspension of this license dated October 30, 2009. There was also a complaining customer regarding the business practices of the licensee.
4. On November 23, 2009 the City Clerk's Office provided notice to the Licensee pursuant to Chapter 105-75-6 of the Milwaukee Code of Ordinances of the police report that could form the basis for non-renewal or suspension and included a copy of the police reports together with the information provided by the complaining customer. The matter was scheduled for hearing on December 10, 2009 at 11:30 a.m., and the licensee did appear and admitted receipt of the notice of hearing and related materials.
6. Based upon the sworn testimony heard and the evidence received at the hearing, the Committee finds the following:

A. The Milwaukee Police Department investigation regarding this application revealed the following:

1. On October 31, 2007 Monitronics International reported to the Milwaukee Police Department a panic alarm at 2876 North 48th Street. A panic alarm is a prohibited alarm signal. Mr. Sherman was issued a citation for prohibited alarm and it was dismissed on January 2, 2008 without prejudice.
2. On October 31, 2007 Monitronics International reported to the Milwaukee Police Department a panic alarm at 1304 South 28th Street. A panic alarm is a prohibited alarm signal. Mr. Sherman was issued a citation for prohibited alarm and it was dismissed on January 2, 2008 without prejudice.
3. Between January 1, 2008 and December 31, 2008 the Milwaukee Police Department received 53 non-verified burglar alarm calls from Monitronics in violation of § 105-75-14(g), Milwaukee Code of Ordinances. Pursuant to Wis. Stat. § 801.11(5) citations were not issued for these violations due to citation service issues.
4. Between January 1, 2009 and April 30, 2009 the Milwaukee Police Department received 46 non-verified burglar alarm calls from Monitronics in violation of § 105-75-14(g), Milwaukee Code of Ordinances. Pursuant to Wis. Stat. § 801.11(5) citations were not issued for these violations due to citation service issues.
5. Between May 1, 2009 and September 17, 2009 the Milwaukee Police Department received 31 non-verified burglar alarm calls from Monitronics in violation of § 105-75-14(g), Milwaukee Code of Ordinances. Pursuant to Wis. Stat. § 801.11(5) citations were not issued for these violations due to citation service issues.

Police Alarm Operator Ann McCarthy has maintained an on-going dialog with a representative of Monitronics (Katie Gilder) regarding these violations and has received repeated assurances that the number of calls in violation of municipal ordinances would be reduced.

B. Minnie H. Johnson (she initialed each page) maintained a log of harassing and annoying calls from Monitronics as follows:

June	Time	
6/4	8:50	1-800-890-6025
6/4	7:25 P	1-800-890-6025
6/8	10:47	1-800-246-6155

6/9	7:20 P	1-800-785-6155
6/11	10:59 A	1-800-246-6155
6/11	7:51	"
6/11	8:25 P	"
6/11	4:30 P	"
6/13	7:38 A	"
6/15	9:31 A	1-800-890-6025
6/17	1:44 P	"
6/16	10:45 A	"
6/4	8:05	"
6/18	9:25	"
6/19	12:41	1-800-246-6155
6/22	3:59 P	1-800-690-6025
6/22	7:41 P	"

17 June calls

July	Time	Telephone Number
7/19	6:37	800-890-6025
7/21	7:41	281-504-4439
7/22	11:59	785-246-6155
7/23	4:54	785-246-6155
7/24	4:34	785-246-6155
7/24	10:04	785-246-6155
7/24	12:50	785-246-6155
4:29	7:28	800-447-9239
7/28	1:26	800-890-6025
7/22	11:59	785-246-6155
7/23	3:29	?
7/23	4:54	785-246-6155
7/24	12:50	785-246-6155
7/28	4:29	800-447-9239
7/21	7:41	281-504-4439 new

15 July calls

Date	Time	Telephone Numbers
8/3	4:45	
8/1	9:34	
8/4		twice
8/27	6:43	1-800-447-9239
	5:43	9890 586-9890
	3:13	586-4701
	3:05	1-800-447-9239
	6:43	1-800-447-9239
	2:50	1-785-246-6155

8/28 9:29 1-785-246-6155

A total of 52 calls made during the month of August 2009. Ms. Johnson noted that the bill is not due until the 28th day of the month

Date	Time	Telephone Numbers
8/6/09	4:36 P	1-178-600-0000
"		1-600-000-0000
"	4:35 P	1-786-246-6155
"	5:36	1-785-246-6155
"	8:41	1-800-447-9239
"	1:36	1-800-890-6025
8/4	9:20	1-785-246-6155
"	10:55	1-800-447-9239
"	4:12	1-800-890-6025
"	1:17	1-800-890-6025
8/14	5:28	1-785-246-6155
"	6:59	1-866-946-8452
8/17	10:31	1-800-586-4701
"	12:18	1-785-246-6155
"	2:03	1-800-447-9232
8/19		1-800-447-9232
8/21	12:52	1-800-447-9239
"	5:29	1-800-447-9239
8/24	1:44	1-800-447-9239
"	8:25	1-800-447-9239
"	6:25	1-785-246-6155
"	7:59	1-800-447-9239
"	10:31	1-866-806-2380
		and more than recorded

Date	Time	Telephone numbers
8/24	7:57	1-800-447-9239
8/25	10:30	1-866-806-2380
8/24	7:59	1-800-447-9239
8/25	10:36	1-866-806-2380
8/25	10:31	1-866-806-2380
"	1:56	1-800-447-9239
"	2:43	1-800-447-9239
"	3:29	1-800-447-9239
"	7:09	1-800-447-9239 hung up – called
"	7:07	1-800-447-9239 right back
8/26	7:56	1-786-246-6155
	9:29	"
8/26	6:43	1-800-447-9239

8/26	3:13	1-800-586-4701
	3:05	800-447-9239
	2:50	785-246-6155
	2:19	800-447-9239
8/28	9:29	785-246-6155

Monitronics called Ms. Johnson at least 6 times on 8/28/09
The calls started at 9:29 and ended after 6:00 pm on 8/28/09

Date	Time	
9/11/09	10:50 A	1-800-447-9239
	12:35 P	785-408-5139 new
	4:20 P	1-800-447-9239
9/12/09	11:26 A	1-800-447-9239
	12:15 P	"
	1:13	"
9/14/09	1:05 P	1-800-447-9239
	1:15 P	1-800-852-4640 new
	1:51 P	1-800-447-9239
	5:46 P	1-800-447-9239
9/15/09	2:21 P	1-800-447-9239
	9:15 A	1-800-447-9239
9/16/09	1:50 P	1-800-447-9239
	2:16 P	1-785-246-6155 new
	2:36 P	1-800-447-9239
	3:22 P	1-800-447-9239
	7:09	1-800-447-9239
9/17/09	1:04	
	1:19	19 + 4 = 23

Date	Time	
9/17/09	1:04	1-800-447-9239
	1:19	1-800-872-0712 new
	1:51	800-447-9239
	6:05	800-447-9239

At hearing the agent of the Licensee testified that only three of the calls were made by Monitronics, and the rest were made by a collection agency contracted by Monitronics for such work.

CONCLUSIONS OF LAW

1. The Committee has jurisdiction to hold hearings and provided Findings of Fact

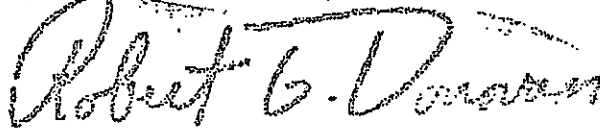
and Conclusions of Law and a Recommendation to the full Common Council pursuant to Chapter 105-75-7 and -9 of the Milwaukee Code of Ordinances.

2. Based upon the above facts found, the Committee concludes that the licensee, Robert N. Sherman, as agent for Monitronics International, Inc has not met the criteria of Chapter 105-75-9 of the Milwaukee Code of Ordinances to allow renewal of the Private Alarm System Business licenses he holds as Agent for Monitronics International, Inc., because of the police report, and testimony of Ms. Johnson.
3. In order to protect the health, safety and welfare of the citizens of the City of Milwaukee, it is the recommendation of the Public Safety Committee that the full Common Council of the City of Milwaukee should exercise its discretion and judgment to not renew the Private Alarm System Business license held by Monitronics International, Inc., Robert N. Sherman, agent, based upon the police report and testimony of Ms. Minnie Johnson.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated above, the Committee, by a vote of four (4) ayes, zero (0) noes and one (1) excused recommends that the Private Alarm System Business Licenses held by Robert N. Sherman, Agent, Monitronics International, Inc. be denied renewal based upon the police report, and public testimony.

Dated and signed at Milwaukee, Wisconsin this 11th day of December, 2009.



ROBERT G. DONOVAN, Chair
Public Safety Committee

152839

COMMITTEE ASSIGNMENTS

CHAIR

Public Safety Committee

MEMBER

Anti-Graffiti Policy Committee

Finance & Personnel Committee

Steering & Rules Committee



ROBERT G. DONOVAN

Alderman, 8th District

Date: December 11, 2009

To: All Members of the Milwaukee Common Council

From: The Public Safety Committee

Re: Report of the Renewal Application of Robert N. Sherman, as Agent for a Private Alarm System Business renewal applications for Monitronics Security, LP located at 2350 Valley View Lane, Dallas, Texas.

FINDINGS OF FACT

1. Robert N. Sherman (hereinafter the "Licensee") is the holder of a Private Alarm System Business license for Monitronics Security, LP doing business at 2350 Valley View Lane, Dallas, Texas. Said license expires at midnight, December 31, 2009.
2. An application to renew said license was timely filed with the Office of the City Clerk on October 29, 2009.
3. Pursuant to Chapter 105-75 of the Milwaukee Code of Ordinances, the application was referred to the Milwaukee Police Department for investigation. The Milwaukee Police Department responded with a report that could form the basis of non-renewal or suspension of this license dated October 30, 2009. There was also a complaining customer regarding the business practices of the licensee.
4. On November 23, 2009 the City Clerk's Office provided notice to the Licensee pursuant to Chapter 105-75-6 of the Milwaukee Code of Ordinances of the police report that could form the basis for non-renewal or suspension and included a copy of the police reports together with the information provided by the complaining customer. The matter was scheduled for hearing on December 10, 2009 at 11:30 a.m., and the agent of the licensee appeared and admitted receipt of the notice of hearing and related materials.
6. Based upon the sworn testimony heard and the evidence received at the hearing, the Committee finds the following:

A. The Milwaukee Police Department investigation regarding this application revealed the following:

1. On October 31, 2007 Monitronics International reported to the Milwaukee Police Department a panic alarm at 2876 North 48th Street. A panic alarm is a prohibited alarm signal. Mr. Sherman was issued a citation for prohibited alarm and it was dismissed on January 2, 2008 without prejudice.
2. On October 31, 2007 Monitronics International reported to the Milwaukee Police Department a panic alarm at 1304 South 28th Street. A panic alarm is a prohibited alarm signal. Mr. Sherman was issued a citation for prohibited alarm and it was dismissed on January 2, 2008 without prejudice.
3. Between January 1, 2008 and December 31, 2008 the Milwaukee Police Department received 53 non-verified burglar alarm calls from Monitronics in violation of § 105-75-14(g), Milwaukee Code of Ordinances. Pursuant to Wis. Stat. § 801.11(5) citations were not issued for these violations due to citation service issues.
4. Between January 1, 2009 and April 30, 2009 the Milwaukee Police Department received 46 non-verified burglar alarm calls from Monitronics in violation of § 105-75-14(g), Milwaukee Code of Ordinances. Pursuant to Wis. Stat. § 801.11(5) citations were not issued for these violations due to citation service issues.
5. Between May 1, 2009 and September 17, 2009 the Milwaukee Police Department received 31 non-verified burglar alarm calls from Monitronics in violation of § 105-75-14(g), Milwaukee Code of Ordinances. Pursuant to Wis. Stat. § 801.11(5) citations were not issued for these violations due to citation service issues.

Police Alarm Operator Ann McCarthy has maintained an on-going dialog with a representative of Monitronics (Katie Gilder) regarding these violations and has received repeated assurances that the number of calls in violation of municipal ordinances would be reduced.

B. Minnie H. Johnson (she initialed each page) maintained a log of harassing and annoying calls from Monitronics as follows:

June	Time	
6/4	8:50	1-800-890-6025
6/4	7:25 P	1-800-890-6025
6/8	10:47	1-800-246-6155
6/9	7:20 P	1-800-785-6155

6/11	10:59 A	1-800-246-6155
6/11	7:51	"
6/11	8:25 P	"
6/11	4:30 P	"
6/13	7:38 A	"
6/15	9:31 A	1-800-890-6025
6/17	1:44 P	"
6/16	10:45 A	"
6/4	8:05	"
6/18	9:25	"
6/19	12:41	1-800-246-6155
6/22	3:59 P	1-800-690-6025
6/22	7:41 P	"

17 June calls

July	Time	Telephone Number
7/19	6:37	800-890-6025
7/21	7:41	281-504-4439
7/22	11:59	785-246-6155
7/23	4:54	785-246-6155
7/24	4:34	785-246-6155
7/24	10:04	785-246-6155
7/24	12:50	785-246-6155
4:29	7:28	800-447-9239
7/28	1:26	800-890-6025
7/22	11:59	785-246-6155
7/23	3:29	?
7/23	4:54	785-246-6155
7/24	12:50	785-246-6155
7/28	4:29	800-447-9239
7/21	7:41	281-504-4439 new

15 July calls

Date	Time	Telephone Numbers
8/3	4:45	
8/1	9:34	
8/4		twice
8/27	6:43	1-800-447-9239
	5:43	9890 586-9890
	3:13	586-4701
	3:05	1-800-447-9239
	6:43	1-800-447-9239
	2:50	1-785-246-6155
8/28	9:29	1-785-246-6155

A total of 52 calls made during the month of August 2009. Ms. Johnson noted that the bill was not due until the 28th day of the month.

	Time	Telephone Numbers
8/6/09	4:36 P	1-178-600-0000
"		1-600-000-0000
"	4:35 P	1-786-246-6155
"	5:36	1-785-246-6155
"	8:41	1-800-447-9239
"	1:36	1-800-890-6025
8/4	9:20	1-785-246-6155
"	10:55	1-800-447-9239
"	4:12	1-800-890-6025
"	1:17	1-800-890-6025
8/14	5:28	1-785-246-6155
"	6:59	1-866-946-8452
8/17	10:31	1-800-586-4701
"	12:18	1-785-246-6155
"	2:03	1-800-447-9232
8/19		1-800-447-9232
8/21	12:52	1-800-447-9239
"	5:29	1-800-447-9239
8/24	1:44	1-800-447-9239
"	8:25	1-800-447-9239
"	6:25	1-785-246-6155
"	7:59	1-800-447-9239
"	10:31	1-866-806-2380
		and more than recorded

Date	Time	Telephone numbers
8/24	7:57	1-800-447-9239
8/25	10:30	1-866-806-2380
8/24	7:59	1-800-447-9239
8/25	10:36	1-866-806-2380
8/25	10:31	1-866-806-2380
"	1:56	1-800-447-9239
"	2:43	1-800-447-9239
"	3:29	1-800-447-9239
"	7:09	1-800-447-9239 hung up – called
"	7:07	1-800-447-9239 right back
8/26	7:56	1-786-246-6155
	9:29	"
8/26	6:43	1-800-447-9239
8/26	3:13	1-800-586-4701

	3:05	800-447-9239
	2:50	785-246-6155
	2:19	800-447-9239
8/28	9:29	785-246-6155

Monitronics called Ms. Johnson at least 6 times on 8/28/09
The calls started at 9:29 and ended after 6:00 pm on 8/28/09

Date	Time	
9/11/09	10:50 A	1-800-447-9239
	12:35 P	785-408-5139 new
	4:20 P	1-800-447-9239
9/12/09	11:26 A	1-800-447-9239
	12:15 P	"
	1:13	"
9/14/09	1:05 P	1-800-447-9239
	1:15 P	1-800-852-4640 new
	1:51 P	1-800-447-9239
	5:46 P	1-800-447-9239
9/15/09	2:21 P	1-800-447-9239
	9:15 A	1-800-447-9239
9/16/09	1:50 P	1-800-447-9239
	2:16 P	1-785-246-6155 new
	2:36 P	1-800-447-9239
	3:22 P	1-800-447-9239
	7:09	1-800-447-9239
9/17/09	1:04	
	1:19	19 + 4 = 23

Date	Time	
9/17/09	1:04	1-800-447-9239
	1:19	1-800-872-0712 new
	1:51	800-447-9239
	6:05	800-447-9239

At hearing the agent of the Licensee testified that only three of the calls were made by Monitronics, and the rest were made by a collection agency contracted by Monitronics for such work.

CONCLUSIONS OF LAW

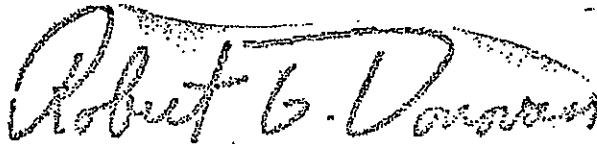
1. The Committee has jurisdiction to hold hearings and provided Findings of Fact and Conclusions of Law and a Recommendation to the full Common Council pursuant to Chapter 105-75-7 and -9 of the Milwaukee Code of Ordinances.

2. Based upon the above facts found, the Committee concludes that the licensee, Robert N. Sherman, as agent for Monitronics Security, LP has not met the criteria of Chapter 105-75-9 of the Milwaukee Code of Ordinances to allow renewal of the Private Alarm System Business license he holds as Agent for Monitronics Security, LP, because of the police report, and the testimony of Ms. Johnson.
3. In order to protect the health, safety and welfare of the citizens of the City of Milwaukee, it is the recommendation of the Public Safety Committee that the full Common Council of the City of Milwaukee should exercise its discretion and judgment to not renew the Private Alarm System Business license held by Monitronics Security, LP, Robert N. Sherman, Agent, based upon the police report and testimony of Ms. Minnie Johnson.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated above, the Committee, by a vote of four (4) ayes and one (1) excused recommends that the Private Alarm System Business License held by Robert N. Sherman as Agent for Monitronics Security, LP, be denied renewal based upon the police report, and public testimony.

Dated and signed at Milwaukee, Wisconsin this 11th day of December, 2009.

A handwritten signature in dark ink, appearing to read "Robert G. Donovan". The signature is stylized with a large, sweeping initial "R" and a long, horizontal flourish extending to the right.

ROBERT G. DONOVAN, Chair
Public Safety Committee



BECK, CHAET,
BAMBERGER & POLSKY, S.C.

Two Plaza East, Suite 1085
330 East Kilbourn Avenue
Milwaukee, Wisconsin 53202

414.273.4200

Fax 414.273.7786

E-mail: abeck@bcblaw.net

December 17, 2009

VIA HAND DELIVERY

Ronald D. Leonhardt
City Clerk
City of Milwaukee
200 East Wells Street, Room 205
Milwaukee, WI 53202-3570

Re: *Written Objections to Public Safety Committee Findings of Fact and Conclusions of Law
and Recommendation
Nationwide Digital Monitoring Company*

Dear Mr. Leonhardt:

Pursuant to your letter of December 11, 2009, and in conformance with Milwaukee Municipal Ordinance Chapter 85, enclosed please find Written Objections to the Findings of Fact, Conclusions of Law and Recommendation of the Public Safety Committee Report issued subsequent to the public hearing before the Public Safety Committee on December 10, 2009. Please confirm that the Licensee intends to appear at the hearing on December 22, 2009 to present its objections to the report of the Public Safety Committee and to seek approval of the license renewal application for Nationwide.

Sincerely,

BECK, CHAET, BAMBERGER & POLSKY, S.C.


Arthur E. Beck

AEB:par

cc: Aaron Wahrsager
Jennifer Kirschenbaum

Enclosure

File No. 09136

CITY OF MILWAUKEE
09 DEC 17 PM 4:21
RONALD D. LEONHARDT
CITY CLERK

IN THE MATTER OF THE
NON-RENEWAL OF A PUBLIC ALARM BUSINESS LICENSE OF

NATIONWIDE DIGITAL MONITORING CO.)
AARON WAHRSAGER, AGENT)
P.O. BOX 712)
FREEPORT, NY 11520,)
)
)
Licensee)

**WRITTEN OBJECTIONS OF LICENSEE TO THE REPORT OF THE
PUBLIC SAFETY COMMITTEE, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDATION OF NON-RENEWAL**

COMES NOW, Nationwide Digital Monitoring Co. ("Licensee"), by and through its attorneys, Beck, Chaet, Bamberger & Polsky, S.C., by Attorney Arthur E. Beck, and for its Written Objections to the Report of the Public Safety Committee, Findings of Fact, Conclusions of Law and Recommendation of Non-Renewal does state as follows:

FINDINGS OF FACT

1. Nationwide Digital Monitoring Co., has been a licensed public alarm business enterprise providing burglar alarm monitoring services only in the City of Milwaukee since the Ordinance's inception in 2005.
2. On or about November 2, 2009, Licensee did file an application to renew its license with the Office of City Clerk.
3. On or about November 10, 2009, the Milwaukee Police Department ("MPD") did compile a synopsis report of Licensee's record of non-compliance with Municipal Ordinance No. 105-75-14.

4. On or about November 23, 2009, the City Clerk did provide written notice to Licensee of the contents of the November 10, 2009 police report together with notice of hearing before the Public Safety Committee on December 10, 2009.

5. (1) While it is true that on or about April 20, 2008, Police Officer McCarthy did speak with Mr. Vitellaro, an employee of Licensee, regarding five (5) non-verified burglar alarm calls received from Licensee from January 1, 2008 to April 27, 2008, subsequent thereto until November, there were no reports of any other non-verified burglar alarm calls in violation of Municipal Ordinance § 105-75-14(G). In fact, it was not until December 2, 2009, that Licensee received any detail as to the alleged twenty-four (24) other non-verified burglar alarm calls attributed to Licensee as “evidence” of ordinance violation.
- (2) Subsequent to the provision of the detail of the twenty-nine (29) total alleged non-verified response violations by Licensee, Licensee provided a written accounting of all twenty-nine (29) calls detailing the exact circumstances under which the calls were relayed to the police department. Of the twenty-five (25) calls alleged to have been forwarded in violation of the ordinance, only six (6) were attributable to Licensee’s failure to discharge its own obligations under the ordinance and only one (1) of those has occurred in the past five (5) months (9/30/09).
- (3) Copies of this documentation were presented and accepted into the record at the December 10, 2009 hearing by counsel for Licensee.

- (4) Additional testimony calling into question the validity of the assertion that Licensee was responsible for the calls subsequent to the April 28, 2009 conversation with Officer McCarthy was also submitted at the hearing.
- (5) Further testimony regarding the remediation actions of the Licensee in response to the initial notification of potential violation of the ordinance as of April 28, 2009, were omitted from the Findings of Fact
- (6) Further testimony as to the total number of monitored alarm calls received by Licensee in the period of January 1, 2008 through September 30, 2009, was also omitted from the Findings of Fact. Taking into account that Licensee processed approximately 1,934 such calls in total with a “noncompliance” factor of only twenty-nine (29) total alleged calls, these factors demonstrate a rate of alleged noncompliance that is less than 1.5% of all calls processed.
- (7) Further, testimony as to the limited nature of services provided by Licensee as an alarm monitoring company only, as a singular service to customers who contracted with other licensees who sell, service, install and/or monitor their systems, was excluded from the Findings of Fact. Failure by the Committee to so acknowledge and distinguish taints the Findings of Fact and Conclusions of Law in that it results in conclusions of failure to abide with ordinance standards by Licensee which are in fact due to failures by other licensed responsible parties in the alarm installation and service process.

- (8) Testimony as to the failure by MPD to properly enforce Municipal Ordinance No. 105-75-7 as to Private Alarm Businesses was also omitted from the Findings of Fact (*i.e.*, failure to file for forfeiture penalties as a remedial measure in lieu of non-renewal or suspension actions) belying the validity of MPD's objections to Licensee's application in this case.

As a consequence of the foregoing, Licensee further objects to the following Conclusions of Law asserted by the Public Safety Committee:

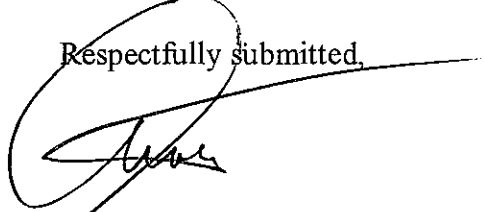
- (1) Licensee acknowledges the jurisdiction of the Committee and the authority to recommend action to the full Common Council;
- (2) Licensee objects to the conclusions that Licensee and its agent have failed to meet the criteria of Chapter 105-75-9 [sic] of the Milwaukee Code of Ordinances based upon the record;
- (3) Licensee disputes the conclusion that the public interest of the citizens of the City of Milwaukee is further advanced by a decision not to renew the Private Alarm System business license based upon the inaccurate police report and the fact that 158 contracted citizens and businesses will be adversely affected by the loss alarm monitoring services provided by Licensee.
- (4) Milwaukee Code of Ordinances Chapter 105-75-9 [sic] does not compel the non-renewal of license action recommended herein. The only ground asserted by the Police Department as objection to the renewal and contained in the record evidence relates to Chapter 105-75-8(d)-(4) "relaying excess" false alarms from customers premises to Fire and Police

Department. (emphasis supplied) Based upon the actions and testimony of other licensees, as well as the evidence submitted by Licensee at the December 10, 2009 hearing, neither the total number of alleged “false alarms relayed” or the comparative number of alleged false alarms objected to by MPD *vis a vis* other licensee applications approved by the Committee, coupled with the late notification of the alleged false alarm calls from MPD meet a standard of “excessive” set forth in the ordinance.

- (5) Finally, Licensee submits that the term “excess” in Municipal Ordinance No. 105-75-8(d)-(4) is vague by definition and cannot meet the necessary specifics either in comparable enforcement records or standards for objection by the Milwaukee Police Department to justify a non-renewal action by the Common Council.

Therefore, Licensee respectfully requests the Common Council to reject the recommendation of the Public Safety Committee and approve the license renewal for Licensee.

Respectfully submitted,



Arthur E. Beck

Drafted and submitted on December 18, 2009 by
Arthur E. Beck, Esq.
Beck, Chaet, Bamberger & Polsky, S.C.
Two Plaza East, Suite 1085
330 East Kilbourn Avenue
Milwaukee, WI 53202
(414) 273-4200

GASS WEBER MULLINS LLC
309 N WATER ST MILWAUKEE WI 53202
TEL 414 223 3300 FAX 414 224 6116
www.gasswebermullins.com

VIA MESSENGER

December 17, 2009

Common Council Members
c/o City Clerk's Office
200 E. Wells Street
Milwaukee, WI 53202

Re: Pinnacle Security
License Application

Dear Council Members:

Pinnacle Security ("Pinnacle") by its counsel Gass Weber Mullins LLC submits the following objection to the Public Safety Committee's recommendation that Pinnacle's application for renewal of its license be denied.

One of the purposes of the Common Council is "to assure uniformity and clarity in the procedures under which certain licenses and permits are considered for renewal, non-renewal, suspension and revocation." Milwaukee Municipal Code § 85-1(1). Further, the Common Council's duty is "to guaranty to licensees, . . . those protections of due process of law respecting a full and fair right to be heard upon adequate notice, to confront and cross-exam witnesses, to have the benefit of rules of evidence, and to present evidence and arguments of law and fact." *Id.*

CITY OF MILWAUKEE
09 DEC 17 PM 4:22
RONALD D. LEDERARD
CITY CLERK
RALPH A. WEBER
DIRECT DIAL 414 224-7699
weber@gasswebermullins.com

I. The Committee Recommendation Puts at Risk the Public Health, Safety and Welfare of 2,200 Milwaukee Households.

Pinnacle provides services to approximately 2,200 Milwaukee residents. Those residents need these services for their peace of mind over their health, safety and welfare. Denying those residents continued, ongoing access to Pinnacle's services, beginning in less than two weeks, without having had a properly noticed and conducted Hearing, and without having Record evidence reasonably supporting this denial of services, would be error.

The vital need for alarm services provided by Pinnacle and other companies to Milwaukee residents is apparent from the number of companies and customers served by those companies. Pinnacle alone serves approximately 2,200 Milwaukee residents, nearly all of them without any issue or dispute whatsoever. To deny these thousands of residents their uninterrupted services, based on a handful of hearsay allegations, without a single supporting witness appearing before the Committee, would be wrong.

Pinnacle works very hard to address and improve its performance concerning unverified alarms. Pinnacle of course appreciates the concern over such alarms, given the potential impact on police services. As a result of Pinnacle's time and attention, not a single unverified alarm call has been received since September 30, 2009.

Pinnacle likewise works very hard to address and improve its performance concerning sales activities. While Pinnacle has installed systems for nearly 2,900 customers over the past three years, the Committee pointed to just two hearsay complaints to the Milwaukee Police Alarm Operator McCarthy from 2009, one on May 5, and one on May 6 (which the Committee mistakenly reports as having occurred on May 5). The Committee also pointed to hearsay complaints from the State, but those similarly small number of complaints (6)

extended over three years and were all closed matters, except for one which “has not yet been processed and Pinnacle has not yet been contacted” Again, basing a denial of services to thousands of Pinnacle customers based on this “evidence” does not reasonably relate to the Public Health, Safety and Welfare.

Pinnacle has adopted for all its sales representatives a strictly enforced Code of Conduct aimed at protecting customer interests. Pinnacle has a team of six compliance officers, headed by a lawyer that works very hard to carefully monitor and supervise sales efforts. Indeed, in one of the two 2009 complaints received from Milwaukee, Pinnacle (1) fined the sales representative \$500 for his actions, (2) fired the sales representative and (3) released the customer from her contract.

As further protection for its customers, Pinnacle follows up directly with each new customer after the purchase of services, going over the terms of the agreement and seeking confirmation from the customer that those terms are agreeable. Any sales representative not following this procedure would be likewise be subject to fines and/or termination.

Pinnacle respectfully suggests that the best way to further the continued Health, Safety and Welfare of its thousands of clients is for the City to allow Pinnacle to continue serving its clients, under whatever further improvement plan and criteria the City wishes reasonably to require.

II. Pinnacle Did Not Receive the Required Notice of the Public Safety Committee Hearing

The notice Pinnacle received concerning the hearing held by the Public Safety Committee on December 10 was deficient because it failed to inform Pinnacle of a number of the procedural rights available to it at the hearing. The Milwaukee Municipal Code requires

that written notice of a hearing be sent to an applicant in advance, and that the notice contain certain basic information about the hearing itself and the applicant's rights at the hearing. Both Milwaukee Municipal Code § 105-75-6(b), which governs notice prior to hearings for new license applications, and § 85-3-1(b), which governs notice prior to hearings for license renewal applications, require that the notice provided to an applicant must, among other things, inform the applicant of the following:

- That the applicant will be given an opportunity to respond to and challenge the reasons for denial or non-renewal of a license (see Milwaukee Municipal Code §§ 105-75(6)(b-3), 85-3(b-3));
- That the applicant has the right to present witnesses under oath and cross-examine opposing witnesses under oath (see id.); and
- That the applicant may appear by counsel (see Milwaukee Municipal Code §§ 105-75(6)(b-4), 85-3(b-5)).

In addition, § 85-4(2)(b) entitled Pinnacle to request that subpoenas be issued. The importance of advance notice of these rights cannot be overstated, given Pinnacle's significant interest in maintaining the continuity of its service to approximately 2,200 Milwaukee residents. The notice Pinnacle received, attached as Exhibit 1, contained none of the information listed above. It did not notify Pinnacle that it would be given an opportunity to challenge the reasons for non-renewal of its application. It did not inform Pinnacle that it could present witnesses or cross-examine opposing witnesses. It also did not inform Pinnacle that it could choose to appear by counsel. By providing a notice that failed to comply with multiple provisions of the Municipal Code, the Public Safety Committee violated Pinnacle's procedural due process rights. Accordingly, its recommendation is invalid and should be rejected by the Common Council.

III. The Findings and Conclusions Are Not Supported By What Occurred at the Committee's Hearing

The Committee Chairman's December 11, 2009 Report and Recommendation could be read to have been the result of careful, individualized consideration of Pinnacle's License, as the law requires. For example, the Report refers to findings "[b]ased upon the sworn testimony heard and the evidence received at the hearing" Such a reading would be totally incorrect, however, as in fact Pinnacle was lumped in at the end of a long hearing and explicitly treated mistakenly as if it were another applicant, as opposed to the individualized attention required under due process and equal protection.

According to the Chairman's December 9, 2009 Press Release, the Committee decided to deal with license renewals for 12 separate private alarm companies during a single meeting, starting at 10:30 am. *See* Exhibit 2. Mr. Rich Goates appeared on Pinnacle's behalf at the December 10, 2009 meeting. He waited patiently as the Committee addressed other applicants.

By the time it was Mr. Goates' turn to speak, wherein he described some of the many successful efforts undertaken by Pinnacle to improve its services to thousands of Milwaukee residents, it was apparent that the members were not interested in treating Pinnacle as an individual company. To the contrary, one of the Committee members said explicitly that as a matter of consistency Pinnacle had to be treated like the other companies, and thus its license likewise should be denied. Pinnacle's extensive and successful improvement efforts therefore were not taken into account.

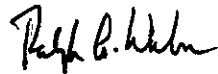
No witnesses were sworn, no non-hearsay evidence was presented, and no individualized attention was given to the interests of Pinnacle and its thousands of Milwaukee

customers. The purported Findings of Fact are drawn from attached documents from various unauthenticated sources containing multiple levels of hearsay. No reasonable review of this Record could support a conclusion that the Health, Safety and Welfare of Milwaukee residents were properly considered with respect to Pinnacle's services.

IV. Conclusion

The Public Safety Committee's recommendation to deny Pinnacle's license renewal application was made after Pinnacle had been provided inadequate notice and denied the opportunity to confront and cross-examine witnesses. The substance of Pinnacle's excellent service improvements not considered, nor was the negative impact on its thousands of customers ever weighed. Accordingly, the Common Council should not accept the Committee's recommendation. Pinnacle would like the opportunity to be heard again before the Committee so it can discuss any further performance improvements and concessions the Committee believes appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph A. Weber".

Ralph A. Weber

RAW:jml



**CITY OF MILWAUKEE
OFFICE OF THE CITY CLERK**

Monday, November 23, 2009

COMMITTEE MEETING NOTICE

Steven P. Zolman, Agt.
Pinnacle Security, LLC
1290 S Sandhill Rd
Orem, UT 84058

You are requested to attend a hearing which is to be held in Room 301-B, Third Floor, City Hall on:

Thursday, December 10, 2009 at 11:15 AM

Regarding: Your Private Alarm System Business renewal application with change of member as agent for "Pinnacle Security, LLC" for "Pinnacle Security" at 1290 S Sandhill Rd.

There is a possibility that your application may be denied for the following reasons:

See attached police report, email dated July 1, 2009, email dated September 4, 2009, letter from the Wisconsin Department of Agriculture, Trade and Consumer Protection dated June 30, 2009, December 9, 2008, September 19, 2007, July 23, 2007, email dated August 26, 2009, consumer complaint filed by Shirley Heron, consumer complaint filed by Constance Janikowski, email dated October 2, 2007, email dated May 25, 2007, consumer complaint filed by Ethel Strayhorn, complaint dated October 14, 2007, fax dated June 22, 2007, and findings of fact dated January 3, 2008.

In addition to the aforementioned, additional objections to the renewal of the license based on the following:

- Failure of the licensee to meet the municipal qualifications.
- Pending charges against or the conviction of any felony, misdemeanor, municipal offense or other offense, the circumstances of which substantially relate to the circumstances of the licensed activity, by the licensee or by any employee of the licensee.
- Relaying excess false alarms from customers premises to the fire or police department.
- Failure of the licensee to obtain, in the case of a burglary alarm, a verified response that an attempted or actual crime has occurred at the alarm site before the alarm signal is transmitted to the police department.
- Failure to provide a private first responder service, as required by the Milwaukee Code of Ordinances 105-75-14-f.
- Failure to comply with Wisconsin Administrative Code and State of Wisconsin Statutes.
- Misrepresentation of services and fees by representatives
- High pressure sales tactics by representatives to coerce citizens into contracts
- Improper and illegal installation of products
- Past history of business
- Operation in the City of Milwaukee without the proper permits and licenses
- Other factors that relate to the public health, safety and welfare.





December 9, 2009

Ald. Bob Donovan
(414) 708-2096

Private Alarm Companies to Appear Before Public Safety Committee

Renewals Could Hinge on Reported False Alarms, MPD Concerns

The Common Council's Public Safety Committee will take up city license renewals for 12 private alarm companies during its meeting at 10:30 a.m. tomorrow (Thursday, December 10, 2009) in room 301-B at City Hall, 200 E. Wells St.

In the past, city license renewals for alarm companies were approved automatically, but in recent years, concerns about false alarms and use of Milwaukee police time and resources has triggered hearings where the companies are compelled to appear before the committee to address reports of alleged false alarm violations and other issues.

Illegal alarms are generally ones that generate a 911 emergency call without first being verified by a private responder. These illegal alarms are viewed by Milwaukee police as burdensome because they often generate false alarms that tie up 911 lines that are reserved for actual emergencies. In the past, issues have also been raised about allegations that some alarm company sales reps have promised potential buyers that police will automatically respond to tripped alarms, which is not the case, said Alderman Bob Donovan, chair of the Public Safety Committee.

"These alarm systems are purchased for the safety and security of businesses and property owners – many of them senior citizens – and customers should not be promised, nor should they be paying for, services they aren't receiving," said Alderman Donovan.

The alarm companies' licenses are set to expire at the end of this month.

-30-

