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December 16, 2009

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

RE: APX Alarm Security Solutions, Inc.
License Application

Council Members:

As counsel for APX Alarm Security Solutions, Inc. ("APX"), and pursuant to Section 85-5-2 of the Milwaukee Municipal Code, we submit this objection to the Public Safety Committee's recommendation to deny APX's application for renewal of its license. APX is a good corporate citizen in the State of Wisconsin with over 3,800 customers, and there was absolutely no evidence presented at the Public Safety Committee hearing on December 10, 2009 that would warrant denial of APX's renewal application. Furthermore, the procedural and substantive due process deficiencies in the so-called "hearing" were so grave and egregious that we believe take the Common Council **must** take action in order to avoid a meritorious lawsuit alleging constitutional violations. Accordingly, we are requesting that the Common Council respectfully reject the Committee's recommendations as improper and unwarranted, and vote to renew APX's license on the grounds set forth below. Additionally, we are requesting the right to be heard at the Common Council meeting on December 22, 2009.

CITY OF MILWAUKEE
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RONALD D. LEONHARDT
CITY CLERK

1. **APX Submitted an Application for Renewal, Not a New Application.**

Founded in 2005, APX is a Utah-based corporation that has been serving customers in Wisconsin and licensed in Milwaukee since 2006. APX services over 375,000 customers throughout the United States and Canada, and is ranked as one of the top ten alarm companies in the United States. It has over 3,800 customers in the state of Wisconsin, and currently APX serves more than 1,400 customers in the Milwaukee metropolitan area alone.

At the hearing on December 10, 2009, APX was told that it was being considered as a new applicant because its address had changed.¹ The City has no authority for that decision. Section 105-75-4(b) provides that when a company's officers change, subsequent applications must be treated as new. But Section 105-75-4(b) does not provide that when a company's address changes, the subsequent application will be treated as new. Accordingly, APX's application was for renewal, and APX is entitled to the procedural benefits that apply to renewal applications, including the right of the applicant to formally object to the Committee's recommendation.

2. **The Common Council has No Basis for Denying APX's License Application.**

APX is engaged in a legitimate business providing products and services to customers in Milwaukee. APX's business does not violate any Wisconsin statute or section of the Milwaukee Municipal Code. There have been only a handful of customer complaints about APX in

¹ APX did change the location of its corporate office from 5132 North 300 West in Provo, Utah to 4931 North 200 West in Provo, Utah, a move of less than a quarter of a mile.

Milwaukee since 2006, and APX has diligently responded to those complaints and attempted in good faith to resolve every situation of customer dissatisfaction. Additionally, APX has always been willing to show its concern for being a good corporate citizen by sending company officers to Milwaukee public hearings about licensing. In addition, APX has offered to accommodate the City through accepting service of process, and to assist the City with revising portions of its ordinances. Accordingly, APX's license should be renewed.

APX has been improperly "lumped" together by the Public Safety Committee with every other private alarm company in determining whether its services and products comply with Milwaukee law. APX sells, installs, monitors, and services private alarm systems that send alerts through its newly acquired central monitoring station in Minnesota. When one of APX's alarms sounds, the central monitoring station attempts to contact the customer through the two-way features of its equipment and then sends a private security guard to investigate. If the alarm signal is verified as a legitimate emergency, the central monitoring station personnel notify the proper authorities. Thus, the system is structured so as to avoid false alarms, and fully complies with the dictates of Section 105-75-11 of the Milwaukee Municipal Code, which proscribes alarm systems that **automatically** contact police with no verification that the situation is a true emergency.

There is, however, a **legal** "panic" component for APX alarms. Specifically, if one of APX's alarm sounds and a customer affirmatively enters a pre-arranged secret code that is registered with the central monitoring center, then the central monitoring center will verify with

the customer through the two-way feature on the alarm panel that there is in fact an emergency, be it medical, police, or otherwise, and the central monitoring station may thereafter contact the proper authorities of the verified conditions. This unusual situation arises when, for example, a customer purposefully activates the alarm to signal that there is an intruder in the house preventing the individual from escaping, or in the event of a medical emergency. For obvious reasons, an individual in such a situation cannot contact authorities directly, but s/he may be able to get to the alarm keypad, or to a medical alert device, to signal an emergency. The fact that the emergency circumstances are verified to APX by the customer or APX's private guard verification service mandates against it being a false alarm. Again, this is wholly consistent with Section 105-75-11 of the Milwaukee Municipal Code.

Until November 2009, APX contracted with Criticom Monitoring Services to be the central monitoring station and provide the monitoring services for its customers in Wisconsin. In November 2009, APX purchased the central monitoring station in South St. Paul, Minnesota from Criticom and began monitoring its own customers. While Criticom was monitoring APX's customers in Milwaukee, APX at all times mandated that Criticom contact APX's private guard dispatch in response to any alarm signal from a customer in order to verify the existence of an emergency. Indeed, in 2007, Criticom sent a representative to a hearing before the city who testified that Criticom did in fact comply with the law and that it notified APX's private guard

dispatch of alarm notifications and received verification from the guard dispatch *before* notifying the city of an alarm activation.²

The City of Milwaukee News Release announcing the hearing on December 10, 2009 stated, among other things, that hearings were being held because the Public Safety Committee is concerned that false alarms are wasting the police department's time and resources.³ Those concerns were **not** raised at APX's hearing on December 10, nor was there any evidence presented at the hearing that APX had any illegal alarm systems, or falsely promised a customer that police would automatically respond to activated alarms.

Instead, the Public Safety Committee focused mostly on issues that have no bearing on whether APX's license should be renewed. For example, rather than starting the hearing as required by the presentation of any evidence from an objection to the renewal of APX's license, Alderman Bob Donovan began the hearing by repeatedly asking why APX was headquartered in Utah. Clearly that was improper and has nothing to do with whether APX has complied with Milwaukee's ordinances.

Similarly Alderman Joe Davis, Sr., focused on whether APX reports non-paying customers to credit bureaus thereby adversely impacting his constituent's credit scores. Again,

² Criticom has acknowledged that on occasion it has experienced "human error" where an alarm notification was transmitted to the City of Milwaukee without first receiving verification of an emergency from APX's guard dispatch. Criticom appeared before the Committee on December 10, 2009, and responded to the allegations that it had improperly sent alarm notifications to the City of Milwaukee for APX customers. Despite these allegations, the committee voted to recommend renewal of Criticom's license.

³ See Exhibit A, City of Milwaukee News Release dated December 9, 2009.

that has nothing to do with whether APX has complied with Milwaukee's ordinances. No witnesses were called to testify, nor documents presented at the hearing to support any objections to APX's application. Indeed, there was **absolutely no evidence submitted that would warrant denial of APX's application for renewal of its license.**^{4, 5} Accordingly, the Public Safety Committee erred by voting to deny the license. More importantly, because the Common Council can only consider "evidence" that was presented at the hearing, the Common Council is compelled under Milwaukee law to reject the recommendation of the Committee and to renew APX's license.

3. **The Public Safety Committee Violated APX's Constitutional Rights.**

The United States Constitution, our state's Constitution, and the City of Milwaukee Municipal Code all set forth procedures for adjudicating the rights of citizens and organizations. The Municipal Code specifically states that the Common Council's purpose is to "assure

⁴ Under Section 105-75-7 of the Municipal Code, the recommendations of the committee **must** be based on evidence presented at the hearing. Probative evidence is limited to the following: 1) Whether the applicant meets the municipal requirements; 2) Whether the applicant has been charged with or convicted of a felony that relates to the licensed activity; and 3) Any other factors that reasonably relate to public health, safety, and welfare.

⁵ Alderman Davis did inquire about warning letters that APX received from the Wisconsin Department of Agriculture, Trade and Consumer Protection. Those letters relate to two customer complaints that the Department received from the Milwaukee-area about APX's direct sales services. Importantly, those letters do not represent instances in which APX was sanctioned or otherwise disciplined by the State. Also important is the fact that APX resolved each of those situations to the satisfaction of its customers. But aside from those facts, the letters introduced by Alderman Davis should not have been considered as evidence at the December 10 hearing because they are hearsay.

uniformity and clarity” in the procedures under which licenses are considered for renewal.⁶ Further, the Code states that it is the Common Council’s purpose to “guarantee” the rights of the public to the “protections of due process of law respecting a full and fair right to be heard upon adequate notice, to confront and cross-examine witnesses, to have the benefit of rules of evidence, and to present evidence and arguments of law and fact.”⁷ The Public Safety Committee conducted the proceedings on December 10, 2009, in a manner that violated these procedural and substantive due process rights. Indeed, the Assistant City Attorney at one point described the process that APX was afforded at the hearing as a “free for all.” Moreover, the Public Safety Committee’s exhibited bias that suggests lack of equal protection. Accordingly, the committee’s recommendation should be overturned or, at least, ignored.

(a) APX Received Inadequate Notice.

Under either Section 105-75-6(b), pertaining to new applications, or Section 85-3(1) *et seq.*, pertaining to renewal applications, APX was entitled to notice of the hearing specifying the reasons for the possible denial. Additionally, APX was entitled to a notice stating that it would have opportunity to respond to and challenge any reason for denial, to present witnesses, and to cross-examine opposing witnesses under oath. Attached as Exhibit B is the notice that APX received, and it does not include all of the information that is required under the sections of the Code that pertain to new or renewal applications. By failing to provide adequate notice, the

⁶ Municipal Code § 85-1(1).

⁷ *Id.*

Public Safety Committee violated APX's procedural due process rights and any decision from the Committee after inadequate notice is a nullity.

(b) The Committee Failed to Open with Testimony from the Objector, or Even Identify the Objector.

Under Section 105-75-4(6)(d-2) of the Municipal Code, relating to new applications, the City was required to begin the due process hearing with testimony from those opposed to issuance of the license. The Public Safety Committee did not open with an objector, nor was the opposing individual or entity ever identified.

Under Section 85-4 of the Municipal Code, relating to renewal applications, APX had even more rights that were denied. For example, under Section 85-4(2)(b), APX was entitled to subpoena witnesses. Had APX received notice of the objector(s), APX might well have subpoenaed one or more witnesses. Thus, by failing to open the hearing with testimony from those opposed to the license, or even giving notice as to the identity of any objector, the Public Safety Committee violated APX's procedural and substantive due process rights as expressly set forth in the Code.

(c) APX had No Meaningful Opportunity to Cross Examine Witnesses or Present Witnesses.

Sections 105-75-6(B)(3) and 85-4(2) of the Municipal Code provide for an opportunity to confront and cross-examine witnesses. In clear violation of the procedural protections offered by those sections, the Public Safety Committee failed to produce **any** witness for cross-examination.

Likewise, the Public Safety Committee denied APX any meaningful opportunity to present witnesses, contrary to the unambiguous provisions set forth in the Code. Specifically,

APX was given such inadequate notice of the issues that were to be considered by the Public Safety Committee that it was prevented from identifying and presenting witnesses to address those issues. For example, the notice did not include **any** reference to the issue that seemed to be most compelling to Alderman Davis, namely whether APX's policy of forwarding delinquent accounts for collection and reporting a customer's failure to honor their payment obligations to a credit bureau (as is APX's right under the law) compromises the welfare of his constituents. If the Public Safety Committee had given notice that this was a key issue, APX would have structured its response accordingly, including subpoenaing witnesses as necessary. Thus, by failing to provide adequate notice, the Public Committee denied APX the right to present witnesses.

Put simply, the hearing was a sham. It lacked any of the procedural safeguards that are set forth in the Code and required under the Constitutions of the United States and the State of Wisconsin. Therefore, the Common Council would be violating its own purpose if it endorsed the Public Safety Committee's vote and denied APX's application.

(d) The Committee Considered Issues that were Previously Adjudicated.

In addition to the foregoing egregious procedural violations, the Public Safety Committee violated APX's substantive rights by considering a police report that was previously adjudicated.

In 2007, APX appeared before the Public Safety Committee to address allegations contained in a police report regarding three instances in which a prohibited alarm system was purportedly used. At that time, APX provided evidence showing that APX sells, installs,

monitors, and services private alarm systems that send alerts through a central monitoring station in Minneapolis and that it had a private guard service as required under the Code. It does not sell, install, monitor or service “panic buttons” as defined under the Code. After hearing a detailed explanation about the services that APX provides, the Committee granted APX’s renewal application in 2007.

At the hearing last week, a police representative began reading into the record **the exact same police report** that was considered in 2007. APX reminded members of the Public Safety Committee that the police report was previously considered in its entirety, and Alderman Robert Puente stated that he recalled the previous discussion. Amazingly, the report was read into the record anyway, in theory because APX is a “new” applicant. APX objected to the admissibility of the report on grounds that the matter was already adjudicated. The chairman of the committee, Alderman Donovan, made no ruling on the objection, and the City Attorney failed to instruct the committee not to consider this inadmissible evidence.

(e) The Chairman Expressed Personal Bias.

Perhaps the most troubling aspect of the hearing from a constitutional perspective was the bias that Alderman Donovan exhibited. He began the hearing by repeatedly asking questions such as “Why Utah?” “Why is it that alarm companies are headquartered in Utah?” “What’s so good about Utah?”

Alderman Donovan showed clearer bias later during the hearing when, from his seat as the chairman, he launched into impromptu testimony about his own alleged encounter with an

APX salesman. Alderman Donovan alleges that sometime last summer, or maybe the summer before, he had an encounter with an APX salesman that caused him concern. After APX objected to this testimony, the City Attorney was moved to comment that the proceeding that was supposed to be a due process evidentiary hearing had turned instead into a “free for all.”

Having expressed his bias against APX, Alderman Donovan did not then recuse himself from the remainder of the proceedings, as he should have. Instead, the Committee was merely instructed not to consider Alderman Donovan’s testimony as evidence. This constitutes a clear violation of APX’s equal protection right to a fair and unbiased hearing. The result should be that the Public Safety Committee’s decision is automatically overturned, ignored, or otherwise nullified.

4. The Common Council Should Grant APX’s Application for a License.

The Public Safety Committee presented no objector, nor any evidence that would support denying APX’s license application. For those reasons alone, the application should have been forwarded to the Common Council for approval.⁸ But the committee also violated APX’s constitutional and statutory rights both with respect to due process, and also with respect to equal protection. As a result, APX has a meritorious claim against the City pursuant to 42 U.S.C. § 1983 which provides, in pertinent part, as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the

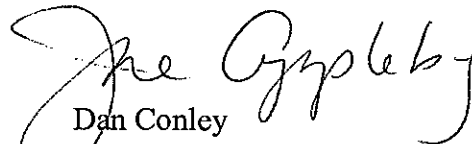
⁸ Pursuant to Section 105-75-4(6) of the Municipal Code, “If no objection is filed to an application, the license **shall** be forwarded to the common council for approval.” (emphasis added)

District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction hereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

APX intends to pursue its claims against the City to the full extent possible under the law. To prevail on a Section 1983 claim, all that APX must show is that (1) it has been deprived of a right secured by the Constitution or laws of the United States, and (2) the deprivation of that right was visited by a person or persons acting under color of state law. *Bowman v. City of Franklin*, 980 F.2d 1104 (7th Cir. 1993). APX can easily meet that standard in this case.

To correct the Public Safety Committee's error and avoid the various burdens and repercussions of a lawsuit, the Common Council must overrule the Public Safety Committee's recommendation and vote to grant APX's licensure application.

Sincerely,


Dan Conley
Jane Appleby

cc: Bruce Schrimpf, Esq. (w/encl.)

FOR IMMEDIATE RELEASE



FOR INFORMATION CALL

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.

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

Tuesday, November 24, 2009

COMMITTEE MEETING NOTICE

Jonathan E. Baxter, Agt.
Apx Alarm Security Solutions, Inc
5132 N 300 W
Provo, UT 84604

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 10:30 AM

Regarding: Your Private Alarm System Business application as agent for "Apx Alarm Security Solutions, Inc" for "Apx Alarm Security Solutions, Inc" at 4931 N 300 W .

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

See attached police report, attached complaint dated September 15, 2009; letters from State of Wisconsin Department of Agriculture, Trade and Consumer Protection dated February 2, 2009, February 2, 2009, June 13, 2008 and May 29, 2008, and complaints from Gwendolyn Bush, Irene Alexander and Robert Hoskins. (All enclosed.)

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.
-

Exhibit B