



Avon Lake gate ordinance in effect despite questions

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By Nicole Hennessy

Avon Lake

A new ordinance requiring all current and future gated communities to install a universal emergency access system is now in effect in Avon Lake.

But enforcing the new rule is proving difficult, since a responsible party to whom fines or jail time would be assigned in the event of noncompliance was not clearly defined in the legislation.

For gated communities to comply with the ordinance, systems like Click2Enter (C2E) must be installed by Dec. 10, 2016.

If these communities have not installed the C2E system by that deadline, their gates must remain open.

The system allows safety forces to enter gated communities using only their radios, as C2E is programmed to recognize emergency services' frequencies.

Of the city's seven current gated communities, three use the C2E system. The others have individual codes safety forces must remember.

It is estimated C2E will cost \$1,500 or less to install with a \$25 permit that needs to be renewed every four years. Not doing so carries a fine of \$150 and possible jail time.

That's where the questions come in. Avon Lake Mayor Greg Zilka explained fines will be assessed to the Homeowners Association (HOA) for each individual community, but on the jail sentence, "I'm not sure how you're going to reconcile that," he said.

"The responsible party typically is the management firm" that handles each community, Councilwoman Jennifer Fenderbosch offered.

Councilman Dave Kos, who chairs the city's Safety Committee said it is discrepancies like this that need to be clarified within the ordinance.

"My belief is that this is a management company issue, not the volunteer resident that chooses to oversee the common area," said Kos.

Kopf Construction disputed the fine portion of the ordinance before council passed it, concerned the fine was excessive, and VIP Management, which manages communities within the city, has also reportedly expressed not only concerns, but has made it clear to the city and HOAs it will not be the responsible party concerning the gates.

When contacted, a representative for VIP declined to comment on the matter.

"The judge doesn't automatically throw somebody in jail," explained Fenderbosch. "The judge has the ability to fine the responsible party \$150 or put them in jail."

The worst that could happen to VIP, she added, would be the fine since "corporations cannot go to jail."

"If something does not operate, they would be given notice that they need to repair it."

Fenderbosch further stated any HOA that does not have properly functioning gates according to the new code would not be in danger of an HOA member serving jail time. However, the HOA in question should find a new management firm at that point, she suggested.

In an e-mail to Fenderbosch, Avon Lake fire Chief Chris Huerner agreed.

"My thoughts are straightforward, if you want to maintain a gated community in Avon Lake ... somebody must take responsibility for the gates functioning properly," he wrote.

"If VIP Management won't do it then I would suggest the residents find a management company that will."

Kos reiterated jailing HOA representatives was never intended. Those who could be jailed under the ordinance are individuals who tamper with gates or engage in any type of criminal activity.

Acknowledging this was a separate issue from simple non-compliance, he could not give an example of a party who would be jailed in the case of a system that was not installed at all or installed properly.

Who would be able to be jailed in the event a C2E system is not installed or properly managed, Kos said, "That is the question."

Assuming no criminal activity involving the tampering of gates has occurred, “Nobody is going to jail,” he relented, explaining the clause is included so the ordinance is taken seriously and carries appropriate potential penalties, not to jail HOA members. He also stated once more a company (VIP) cannot be jailed anyway.

Still, the fact the language is included in the ordinance at all continues to make those involved confused and uncomfortable.

The ordinance also states the fire department will inspect the gates at no cost twice per year.

Huerner said at this point, no date has been set for the first inspection.

Zilka said when Avon Lake City Council passed the measure, he expressed concerns; however, they voted 7-0 to pass the ordinance.

“Any HOA has problems trying to get people to serve on the board,” Zilka said, explaining the possibility of jail time could worsen this issue.

Without clearly defined responsible parties, Zilka said, there is work to do.

Before a C2E system was mandated in the city, police, EMS and firefighters were (and still are until the issues surrounding the matter are resolved) forced to stop their vehicles and enter a code in an emergency. In the event another city is providing mutual aid – cities like Avon, Bay Village or Sheffield Lake – complications arise.

In addition to entry codes, each gate, even those equipped with C2E, has alternative entry methods, such as pull stations or lock box keys, but Huerner said these entry methods all force firefighters or police to exit their vehicles to operate them.

With C2E, once a preprogrammed radio is activated, the gates go up.

In the past 10 years the fire department has responded to more than 215 calls that required access to a gated neighborhood, some of which did not go smoothly.

The bottom line, Zilka said, is “the gates need to be working properly. If they aren’t, that’s very problematic for our safety forces, and certainly residents should be concerned about that.”

“If it takes several minutes for a gate to be released, certainly it could be a life-or-death situation. And if our vehicles have to crash through the gate, we’re going to cause damage to city vehicles.”

Kos said the city’s safety committee may discuss the issue once more. Language within the ordinance, he said, can be tweaked or clarified as needed.

“When they were drafting the gated community language, we gave input on what we would like to see, which was basically there’s a radio-operated opener emergency services can use and that it’s working,” said Huerner.

“And if it’s not working that they have to either fix it or the gate has to remain open until they do fix it. That’s all we wanted.”

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