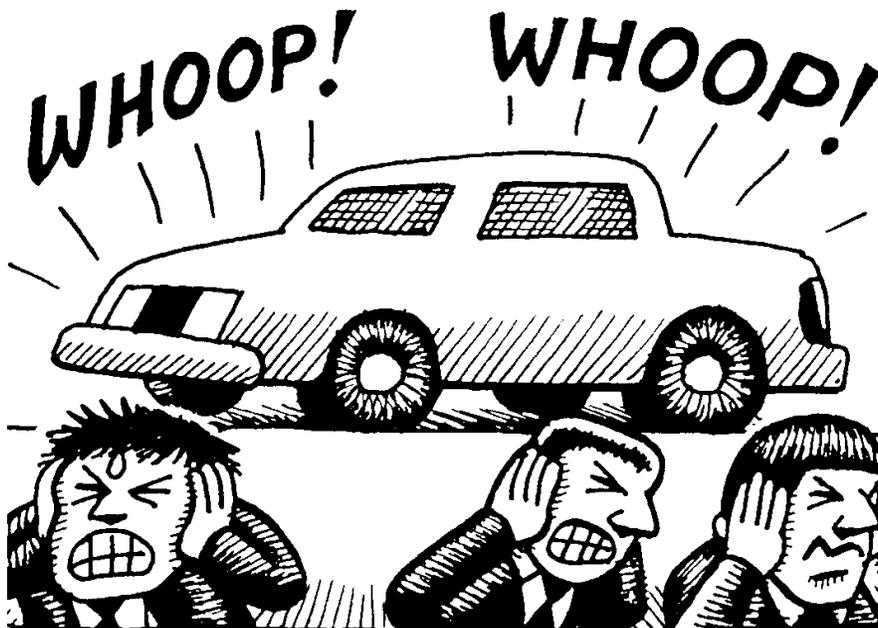


# Alarmingly Useless

## The Case for Banning Car Alarms in New York City

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# Introduction

Of all the ways that automobiles impinge on the lives of New Yorkers, few are as infuriating and unnecessary as the audible car alarm. It is hard to find an issue that generates such a visceral and unanimous response from one end of the political spectrum to the other: car alarms make New York City a worse place to live. With the City having taken on squeegee men, sidewalk cyclists, and cigarette smokers, it is time to go after Quality of Life Public Enemy #1.

T.A. undertook this study to determine the costs and benefits of audible car alarms in the nation's densest urban environment and to map out a strategy for banning audible car alarms in the five boroughs of New York City.

## Summary of Findings

### **CAR ALARMS COST NEW YORK \$400 TO \$500 MILLION PER YEAR**

The average New York City resident pays a car alarm "Noise Tax" of approximately \$100 to \$120 per year. Added up, car alarms cost New Yorkers between \$400 and \$500 million per year in public health costs, lost productivity, decreased property value, and diminished quality of life.<sup>1</sup>

- Car alarms are a significant and costly public health problem. The type of noise produced by car alarms boosts stress hormones and has been linked to cardiovascular disease, gastrointestinal illnesses, psychological problems and unhealthy fetal development in a number of studies over the last 30 years.
- Car alarms hurt New York City's kids. Children who are exposed to the type of noise produced by car alarms have been found to have more problems with reading, motivation, and scholastic aptitude.
- Car alarms destroy civility and quality of life. US Census data from 2001 show that traffic noise and car alarms are a primary reason why families leave American cities.

### **AUDIBLE CAR ALARMS DO NOT WORK**

Manufacturers, installers, insurers, criminologists, police, and thieves all say that car alarms are ineffective at stopping car theft. They simply do not work.

- A 1997 analysis of insurance-claims data from 73 million vehicles concludes that cars with alarms "show no overall reduction in theft losses" compared to cars without alarms. GM, Ford, and other auto-makers have begun to phase out factory installations of car alarms, calling the devices mere "noisemakers."
- People don't respond to car alarms because the vast majority are false. Authorities estimate that 95% to 99% of all car alarms are false. The Progressive Insurance Company found that fewer than 1% of respondents say they would call the police upon hearing a car alarm.
- The professionalization of car theft has made alarms obsolete. In the past 20 years, car theft has evolved from a juvenile pastime into a \$8.2 billion a year business. Eighty percent of cars are stolen by organized crime. Alarms do not deter the pros.

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<sup>1</sup> See Appendix A: Car Alarm Noise Cost Model. Please note that these numbers are liable to change as we continue to develop our cost model.

## **THERE ARE MANY GOOD ALTERNATIVES TO CAR ALARMS**

There are numerous inexpensive and effective automobile security products on the market today. If audible alarms were made illegal, car owners would switch to more effective devices.

- Brake locks are inexpensive (about \$50) and difficult to defeat.
- Personal car alarm pagers buzz a vehicle's owner when a car is disturbed rather than annoying an entire neighborhood.
- Lojack uses global positioning satellites to keep track of vehicles and often leads police to the thieves' chop shops.
- Passive immobilizers have reduced theft rates of some car models by as much as 77%.

## **THE CITY CAN LEGALLY BAN CAR ALARMS**

New York City law currently limits audible alarms to three minutes of noise and bans the use of motion sensors, the technology responsible for most false alarms. These laws are ineffective and mostly unenforced.

- T.A. legal analysis concludes that the City of New York has the authority to ban the sale, use, or installation of audible motor vehicle alarms.
- City Council members introduced a bill in 2000 to ban the sale and installation of car alarms in New York City. The bill is currently buried in the City Council Committee on Environmental Protection and has never received a public hearing.
- Insiders say that a ban on car alarms is being prevented by City Council members who are afraid to take away the 5% discount on comprehensive coverage (less than \$20 per year on average) that some car owners receive for having alarms in their vehicles.

## **RECOMMENDATIONS**

Ban audible car alarms in New York City.

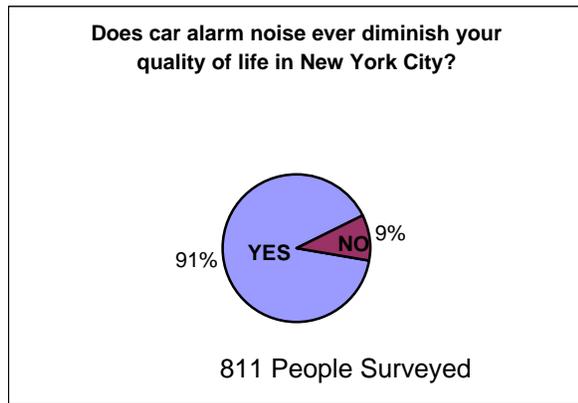
- As soon as budget negotiations are done this spring, the City Council should hold a public hearing on the car alarm legislation currently before the Environmental Protection Committee (Int. 0194-2002).
- The legislation should be modified to include a complete ban on the use of audible alarms within the five boroughs.
- The New York State Legislature should be urged to eliminate insurance discounts for car alarms in a city of "one million or more."

# I. The Cost of Car Alarms

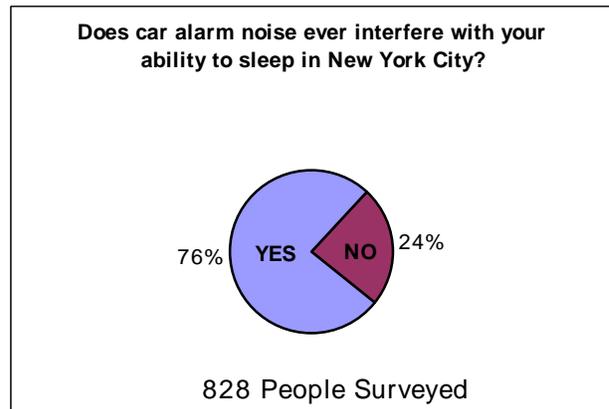
Car alarms impose significant costs on New York City residents. Car alarm noise is a form of pollution known as a “negative externality”: the unexpected and unaccounted-for cost of an economic activity. When a New Yorker buys and installs a car alarm, the \$200 to \$1,000 he or she spends does not account for the health, productivity, property value, and quality of life costs the alarm will impose on the owner’s neighbors. According to T.A.’s Car Alarm Noise Cost Model, these costs amount to a “noise tax” of \$100 to \$120 per year for the average New York City resident. The total annual cost of car alarms to all New York City residents is \$400 to \$500 million (see Appendix A for details).

New Yorkers unequivocally despise car alarms. In studying the issue, T.A. surveyed over 800 New York City residents. Of these, about 90% say that car alarm noise diminishes their quality of life (fig. 1). Three out of four say car alarms interfere with their ability to sleep (fig. 2) and just over half say the sudden and unexpected noise of alarms diminishes their ability to work productively. These figures correspond with data gathered from the NYPD’s Quality of Life Hotline. In 2001, noise complaints comprised 83% of the 97,000 calls received, with car alarms consistently near the top of the list.<sup>2</sup>

**Figure 1.**



**Figure 2.**



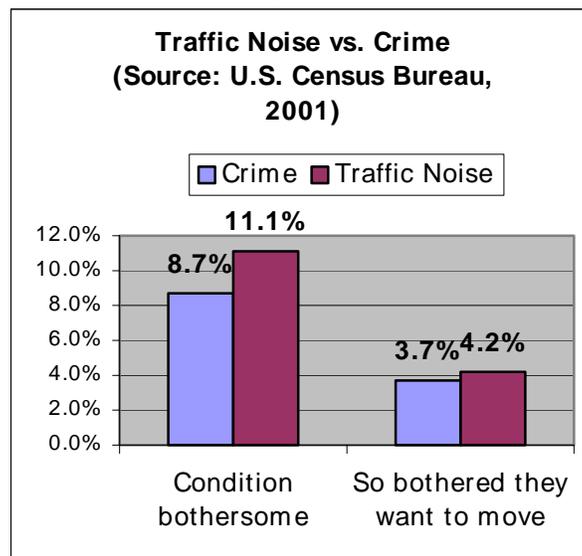
Talented individuals and working families are leaving New York City because of traffic noise and car alarms. In a 2001 Census survey of 53,600 American households, more people reported that they are bothered by traffic noise (including car alarms) than by any other factor, including crime and the condition of local schools.<sup>3</sup> More people also rated traffic noise as “so bothersome they want to move” (fig.3). A recent survey by the League for the Hard of Hearing went further, and found that car alarms in particular were the third most irritating source of noise in our environment, bothering 83% of respondents.<sup>4</sup>

<sup>2</sup> City of New York, “Mayor Michael R. Bloomberg Announces Operation Silent Night,” press release No. 256, Office of the Mayor, Oct. 2, 2002

<sup>3</sup> U.S. Census Bureau, Current Housing Reports, Series H150/01, American Housing Survey for the United States: 2001, U.S. Government Printing Office, Washington, DC, 2002

<sup>4</sup> Arline L. Bronzaft, Elizabeth Deignan, Yael Bat-Chava, and Nancy B. Nadler, “Intrusive Community Noises Yield More Complaints,” Hearing Rehabilitation Quarterly, Vol. 25, No. 1, 2000

**Figure 3.**



## **PUBLIC HEALTH**

Urban traffic noise — particularly the sudden, unexpected and extremely variable noise produced by car alarms — is a significant contributing cause to a number of serious and expensive health problems. Loud noise causes a fight-or-flight response, even when there is no real danger. Capillaries in the extremities constrict and blood surges to the brain, the liver secretes glucose for energy, and the adrenal gland pumps hormones into the bloodstream, boosting stress levels. Not surprisingly, numerous public health studies have shown clear links between noise and cardiovascular problems such as hypertension, high blood pressure, and heart disease. Men appear to be particularly susceptible.<sup>5</sup>

Car alarm noise isn't only bad for the heart. Studies also show correlations between chronic noise and gastrointestinal illnesses, psychological problems and unhealthy fetal development. To sum up 30 years worth of medical literature most succinctly: Noise makes people stressed out. And stress contributes to nearly every human illness.<sup>6</sup>

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<sup>5</sup> For an overview of recent studies, see Elise E. M. van Kempen, Hanneke Kruize, Hendriek C. Boshuizen, Caroline B. Ameling, Brigit A. M. Staatsen, and Augustinus E.M. de Hollander, "The Association between Noise Exposure and Blood Pressure and Ischemic Heart Disease: A Meta analysis," *Environmental Health Perspectives*, Vol. 110, No. 3, March 2002. For a broad study of the health impact of noise, see B. Berglund, T. Lindvall, and D. Schwela, *Guidelines for Community Noise*, World Health Organization, Geneva, 1995

<sup>6</sup> For an example, see W. Babisch, H. Fromme, A. Beyer, and H. Ising, "Increased catecholamine levels in urine in subjects exposed to road traffic noise: the role of stress hormones in noise research," *Environment International*, Vol. 26, No. 7-8, June 2001, pp. 475-81. For a journalistic treatment of recent research on stress hormones, see Erica Goode, "The Heavy Cost of Chronic Stress," *New York Times*, Dec. 17, 2002, pp. F1

Obviously, a certain level of background noise is always going to be the cost of living in a great metropolis. But car alarms are especially harmful for two reasons. First, their variable noise can't be "tuned out" as easily as steady sounds.<sup>7</sup> Second, many new car alarms exceed 125 decibels (dBA). This is louder than the sound of a jet airplane taking off 200 feet away, and over twice the volume of a loud dance club. It's no wonder that car alarm manufacturers give their products pseudo-military names like Cobra, Hellfire, Hornet, and Viper — these products can actually damage your hearing and your health. In the dense, urban environment of New York City, car alarms exact a serious public health cost.

## **CHILDHOOD LEARNING AND DEVELOPMENT**

Schoolchildren are especially affected by traffic noise. A 2001 study by Cornell University environmental psychologist Gary Evans finds that even low-level, everyday traffic noise increases blood pressure, heart rates and stress hormones among fourth-graders. "Noise can have serious health, learning and task-motivation effects in children and adults," Evans says. He found that children who are "exposed to traffic noise become less motivated, presumably from the sense of helplessness that can develop from noise they couldn't control."<sup>8</sup>

Evans's findings support the famous results of a 1975 study conducted by New York City noise expert Professor Arline Bronzaft. She found that children in classrooms facing noisy, elevated subway tracks read as much as one grade-level below their counterparts in quiet classrooms.<sup>9</sup> Another study examined a Washington Heights apartment building overlooking the George Washington Bridge and measured the noise exposure in different apartments. Carefully controlling for differences in social class and air quality, the authors found that children living on lower, noisier floors did not read as well as those on the quieter, upper floors. Apparently, traffic noise had made the children inattentive to acoustical cues, hindering their ability to pay attention in class.<sup>10</sup> In a city struggling to improve its education system, the chronic noise of car alarms is a handicap New York's children do not need.

## **URBAN CIVILITY AND QUALITY OF LIFE**

Alarms make New York less civil, eroding the sense of neighborliness and mutual respect necessary to live in America's most densely-populated city. In a series of psychological studies in the 1970s, researchers "accidentally" dropped books on the sidewalk and measured how often passersby offered to help pick them up. In normal conditions, 80% of the pedestrians offered help. With an 87 dBA lawnmower blaring nearby (about half the volume of an average car alarm), only 15% of passersby offered their assistance (fig. 4).<sup>11</sup>

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<sup>7</sup> See explanation of "Robinson's Formula" in Appendix A.

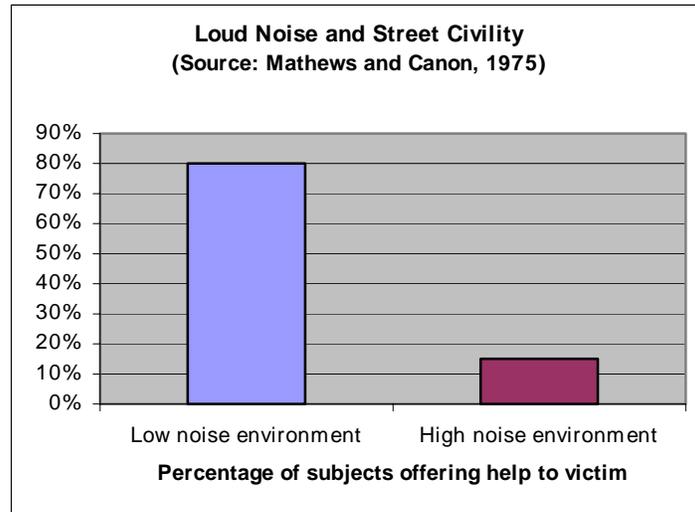
<sup>8</sup> Cornell University, "Cornell researcher and his co-authors find everyday traffic noise harms the health and well-being of children," press release, office of Susan S. Lang, May 22, 2001

<sup>9</sup> Arline L. Bronzaft, "Beware: Noise Is Hazardous to Our Children's Development," Hearing Rehabilitation Quarterly, Vol. 22, No. 1, 1997

<sup>10</sup> Paul A. Bell, Andrew Baum, Jeffrey D. Fisher, and Thomas C. Greene, Environmental Psychology, 3rd ed., Harcourt Brace Jovanovich, Fort Worth, 1990, pp.135

<sup>11</sup> *Ibid*, pp.148

**Figure 4.**



Another study found that more people socialized with their neighbors on quiet streets than on noisy ones.<sup>12</sup> Unlike the unavoidable roar of airplanes or the beeps of reversing trucks, alarms are not just a source of noise, but an insult to communal values.<sup>13</sup> “People who place such alarms in their vehicles show the ultimate in selfishness: a willingness to invade the space of their fellow citizens with a raucous noise that says, ‘I care about my car and couldn’t care less about your ears,’” argues anti-noise activist Dave Pickell in the *City Journal*.<sup>14</sup> An alarm imposes upon everyone, without respecting the neighbors’ need to sleep, talk, work, read, and think.

Car alarms assault public space and foster an atmosphere of incivility and anxiety. The NYPD believes that car alarms create an atmosphere conducive to crime. Like broken windows and graffiti, blaring alarms are one of the “signs that no one cares, and invite both further disorder and serious crime,” according to *Police Strategy No. 5: Reclaiming the Public Spaces of New York*.<sup>15</sup> In a post-9/11 city facing a huge fiscal crisis and genuine security threats, we just can’t afford to allow this technology on our streets anymore. In the final analysis, the true cost of car alarm noise to the citizens of New York City is immeasurable.

<sup>12</sup> John Sedgwick, “Cut Out That Racket,” *The Atlantic Monthly*, Nov. 1991, pp.54

<sup>13</sup> That is to say, unavoidable for the pilots or truck drivers themselves. Residents of neighborhoods with high airplane or truck noise might feel insulted by the policies of the FAA or NHTSA, but not by their own neighbors.

<sup>14</sup> Brian Anderson, “Let’s Ban Car Alarms,” *City Journal*, Winter, Vol. 12, No. 1, 2002

<sup>15</sup> New York City Police Department, *Police Strategy No. 5: Reclaiming the Public Spaces of New York*, City of New York, New York, 1994, pp. 6, 11, 20

## II. Audible Car Alarms Don't Work

Once a matter of debate, the evidence is now clear: car alarms, for all their sound and fury, do nothing whatever to stop car theft or theft from within cars. “Car alarms are a terrible urban blight with obvious social costs — noise pollution, increased stress, wasted police manpower dealing with broken alarms — and it’s not clear there are any benefits in return,” says Lawrence Sherman, director of the Jerry Lee Center of Criminology at the University of Pennsylvania. “No study has demonstrated that they reduce auto theft.”<sup>16</sup>

The insurance data are unequivocal. In 1997, the non-profit Highway Loss Data Institute (HLDI) surveyed insurance-claims data from 73 million vehicles, to see which devices could prevent theft. Looking at cars from many different model years, across the country, the study concludes that cars with alarms “show no overall reduction in theft losses” compared to cars without alarms.<sup>17</sup> The big auto-makers agree. “An audible system is really just a noisemaker,” says General Motors spokesman Andrew Schreck, explaining why only 8% of GM’s light duty vehicles have an alarm as standard equipment. “Most people, when they hear an alarm, they just walk the other way.”

Experts cite two reasons for the ineffectiveness of audible alarms — the prevalence of false alarms and the professionalization of auto theft.

### FALSE ALARMS – THE CAR THAT CRIED WOLF.

The vast majority of alarms are false. When staff members at the New York State Legislature researched the issue in 1992, they estimated that 95% of alarms were set off by the vibrations of passing trucks or glitches in the car’s electrical system, not by potential thieves.<sup>18</sup> That estimate is conservative. Other experts conclude that false alarms account for over 99% of the alarms heard.<sup>19</sup> People who live in cities have simply become immune to the alarms’ incessant cries for help.

A recent survey by the Ohio-based Progressive Insurance Company found that fewer than 1% of respondents say they would call the police upon hearing a car alarm.<sup>20</sup> T.A.’s study found that alarms have prompted fewer than 5% of New Yorkers to *ever* take action against car theft (fig. 5). Meanwhile, 60% of respondents say they have called the police or taken action against the obnoxious noise created by an alarm (fig. 6). Apparently, the alarms themselves are a much more pressing crime problem than the thieves they are meant to deter.

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<sup>16</sup> Quoted in John Tierney, “Laws Encourage Car Alarms, But Din May Not Be Worth It,” New York Times, Feb. 19, 1991, pp. A1

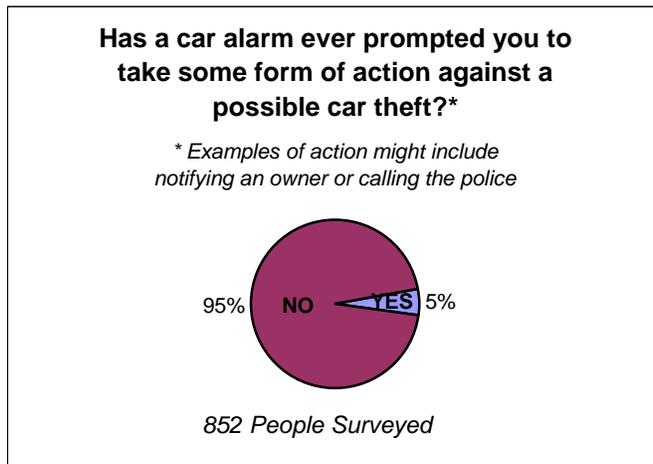
<sup>17</sup> Highway Loss Data Institute, “Insurance industry analyses and the prevention of motor vehicle theft,” Business and Crime Prevention (Marcus Felson and Ronald V. Clarke, eds.), pp. 283-93, Monsey, NY: Willow Tree Press, Inc.: 1997

<sup>18</sup> William Murphy, “It’s Simply Alarming: bill would ban noisy anti-theft devices on cars,” Newsday, Apr. 28, 1997

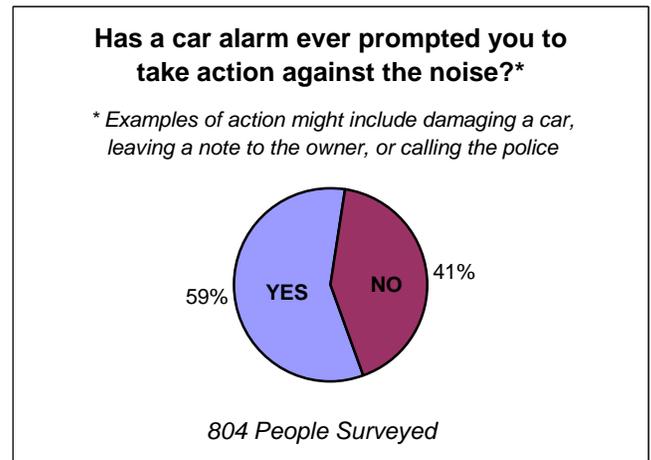
<sup>19</sup> Steven N. Brautigam, “Rethinking the Regulation of Car Horn and Car Alarm Noise: An Incentive Based Proposal to Help Restore Civility to Cities,” Columbia Journal of Environmental Law, Vol. 19, pp. 411-12

<sup>20</sup> supra n.14

**Figure 5.**



**Figure 6.**



In New York City, false alarms are so ubiquitous that car owners often don't even pay attention to their own alarms. "If you're in a store, and an alarm goes off in the parking lot outside, do you immediately think it's your car and come rushing out?" asks Brooklyn alarm dealer Norman Maryasis in a candid moment. "No."<sup>21</sup> HLDI research confirms these observations. "People tend not to react because the alarms activate so frequently for reasons other than actual theft."<sup>22</sup>

Alarm manufacturers are well aware of this significant product defect. At a 1992 New York City Council hearing, industry spokesman Darrell Issa admitted that "only in areas where the sound causes the dispatch of the police or attracts the owner's attention is an alarm effective."<sup>23</sup> In New York, where neither police nor owners respond to the constant blaring, alarms are uniquely ineffective.

## PROFESSIONALIZATION OF AUTOMOBILE THEFT

In the past 20 years, car theft has evolved from a juvenile pastime into an \$8.2 billion a year business.<sup>24</sup> Organized professionals now account for 80% of stolen cars, and alarms don't deter them at all.<sup>25</sup> "Defeating' a car alarm is a non-issue," says criminologist Michael Maxfield, now

<sup>21</sup> supra n.14

<sup>22</sup> supra n.17

<sup>23</sup> Bruce Weber, "Bill to Quiet Wailing Car Alarms Draws Criticism," *New York Times*, Apr. 21, 1992, pp. B2. Even if the false alarm problem were solved, alarms might remain ineffective, since most people refuse to get involved when they witness street crime. In Fordham University psychologist Harold Takooshian's study, New York's pedestrians, like their counterparts in other cities, ignored a conspicuous thief most of the time. In 8% of the cases, New Yorkers intervened to question a car thief or inform an authority — but 15% of the time, they actually helped the thief break in! See Harold Takooshian and Silva E. Barsumyan, "Bystander Behavior, Street Crime, and the Law," in *Studies in Deviance*, B.I. Levin, ed., Institute for Sociology, Moscow, 1992

<sup>24</sup> Federal Bureau of Investigation, *Crime in the United States: 2001*, Washington DC, pp.53

<sup>25</sup> See William J. Bratton and William Andrews, "Crime & Punishment: What We've Learned About Policing," *City Journal*, Vol. 9, No.2, Spring 1999, which claims that organized crime rings are responsible for 70% of the cars stolen in New York City. "Free-lance" professionals steal perhaps another 10%, and amateurs the remaining 20%, according to criminologists' estimates.

studying car theft for the state of New Jersey. “Thieves smash windows, yank wires and the alarm is deactivated. Eighty percent of all thieves can and do steal a car with an alarm.”

Police officers agree. “Alarms are fine for deterring joy riders,” says detective E.S. Hopper, former head of the auto-theft unit in Atlanta. “But it would only be a two-second slowdown for a professional thief.”<sup>26</sup> Gary Sims, car theft expert for the Los Angeles Police Department, confirms: “I’ve watched suspects steal a Mercedes that had an alarm system in less than a minute.”<sup>27</sup>

Even alarm installers concede the ease of overcoming an alarm. “The vast majority of alarms can be disabled in, literally, ten seconds,” says Micah Sheveloff, a former installer who has reviewed alarm systems for *Car Stereo Review* magazine. “And a knowledgeable thief can take apart the most sophisticated \$1,000 alarm installation in less than 5 minutes.”

In her 1992 study, *Car Theft: The Offender’s Perspective*, criminologist Claire Nee presented the only evidence T.A. could find that alarms might actually be an effective deterrent.<sup>28</sup> The increasing professionalization of car theft, however, has led her to question her findings. “I suspect the picture has changed dramatically since 1992 when we did the survey,” she says. “Car security has improved greatly and there are reasons to believe, if you look at government figures, that ‘joyriding’ has decreased because of this while ‘professional’ car theft hasn’t.”

As alarms become commonplace, even the juvenile joy riders are beginning to defeat them easily. Professor Ronald Clarke, auto theft expert at Rutgers University, notes in his study for the Department of Justice that “interviews with offenders, including joy riders, show a fairly quick learning curve regarding how to deactivate alarm systems.”<sup>29</sup> In short, car alarms today present no obstacle to the pros, and very little to the amateurs.

## **THEFT OF PROPERTY FROM CARS**

Alarms purport to stop theft *from* cars, not just *of* cars. No evidence suggests that they are effective here, either. Although theft of car parts in New York plunged over 90% between 1988 and 1998, from 81,970 reported thefts to 7,949,<sup>30</sup> police attribute the drop to a crackdown on stolen parts buyers. Between 1995 and 1998, NYPD conducted over 60 sting operations where police offered supposedly stolen parts to dealers.<sup>31</sup> The detachable faceplates on car stereos, now available on about 80% of aftermarket systems, have also made a big difference, suggests Professor Andrew Karmen at John Jay College.<sup>32</sup>

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<sup>26</sup> Quoted in Michelle C. Brooks, “Sound the Alarm: An overview of vehicle anti-theft systems,” *The Atlanta Journal and Constitution*, Sept. 23, 1999, pp.6BE

<sup>27</sup> Quoted in Jeanne Wright, “Your Wheels: The Shocking Truth About the Latest Anti-Theft Gizmo for Cars,” *The Los Angeles Times*, Sept. 10, 1998

<sup>28</sup> Roy Light, Claire Nee, and Helen Ingham, *Car Theft: The Offender’s Perspective*, Home Office Research Study No. 130, HMSO, London, 1992

<sup>29</sup> Ronald V. Clarke, *Thefts Of and From Cars in Parking Facilities*, U.S. Department of Justice, Office of Community Oriented Policing Services, Problem-Oriented Guides for Police Series, No. 10, 2002, pp.24

<sup>30</sup> Marcia Biederman, “A Sign of the Times: No More Signs,” *New York Times*, Feb. 16, 2001

<sup>31</sup> supra n.25

<sup>32</sup> supra n.30

One theory why car alarms do nothing to protect against break-ins is the “moral hazard” or “risk homeostasis” effect: people with alarms are more likely to carelessly leave their valuables in the car, thinking that the alarm will protect them.<sup>33</sup>

In some anecdotal cases, the overwhelming prevalence of false alarms actually works to thieves’ advantage. Journalist Patrick Cooke relates the following story:

“One evening not long ago, while walking his dog along West 77<sup>th</sup> Street, writer Charles Mann spotted a fellow at the end of the block behaving strangely. ‘The guy was going down the street rocking parked cars back and forth,’ Mann recalls. This rocking inevitably set a car alarm to wailing. By the time Mann reached the end of the street and saw the broken glass, he had figured out what was going on. ‘The thief knew that nobody in the neighborhood would pay the slightest attention to a car alarm,’ he says, ‘so he used the noise to cover the sound of breaking the window. Then he stole the radio out of the car.’”<sup>34</sup>

### **III. Auto Theft-Prevention Devices That *Do* Work**

Although car theft has dropped 73% in New York City over the past decade,<sup>35</sup> it remains a common and costly property crime. Fortunately, there are a number of affordable and effective automobile theft-prevention options currently on the market. These silent alternatives truly make audible alarms obsolete.

Steering wheel locks (such as The Club) and brake pedal locks are the least expensive solutions, and both work to deter joyriders. Brake locks are particularly difficult to defeat. For those attracted to alarms, personal car alarm pagers buzz a vehicle’s owner when a car is disturbed rather than annoying an entire neighborhood. Ten of the fourteen New York City car alarm installers we called sell and install these pagers, for about \$400. (By comparison, conventional aftermarket alarms range from \$200 to \$1,000.) With a silent pager, an owner knows when his car is being threatened, and can take appropriate action. This marks a great improvement over audible alarms, and eliminates the problems of noise pollution and false alarms.

The best theft prevention device on the market is the passive immobilizer, now standard equipment on 98% of General Motors’ light duty vehicles and nearly all of the new Fords. These immobilizers use a key that contains a computer chip which communicates with the car’s engine. Without the proper key, the only way to steal the car is to tow it away. “Obviously, an immobilizer is more effective than an alarm,” says GM spokesman Andrew Schreck. “An audible system is really just a noisemaker, but we can tie an immobilizer directly to the ignition system, to make sure it really is a deterrent. And it doesn’t cost us any more than putting in an alarm.”

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<sup>33</sup> For an example of this effect, see Samuel Peltzman, “The Effects of Automobile Safety Regulation,” *Journal of Political Economy* Vol. 83 (August 1975), pp. 677-725 (where Peltzman argues that drivers with seatbelts, knowing that they have a greater margin of safety, drive faster and less carefully.)

<sup>34</sup> Patrick Cooke, “Noises Out: What it’s doing to you” *New York Magazine*, Nov. 2, 1992

<sup>35</sup> Source: NYPD CompStat Unit

The insurance statistics speak for themselves. When Ford added an immobilizer system to the Ford Mustang, theft rates dropped 77%.<sup>36</sup> The next year, Ford put this system on the F-150 truck, and its insurance claims fell from 786 to 198. Average theft losses for the Nissan Maxima, once \$14,148, plunged to \$5,429 in the year an immobilizer was introduced. On average, immobilizers cut theft losses in half, at no extra cost to the consumer, and make audible alarms completely unnecessary.<sup>37</sup>

Finally, vehicle tracking systems such as Lojack dramatically cut auto theft rates by using global positioning satellites to keep track of cars. When a theft is reported, police can track and recover the car 95% of the time.<sup>38</sup> In comparison, cars without Lojack are recovered 62% of the time.<sup>39</sup> Very often, Lojack leads police directly to the thieves. Lojack has helped police to break up at least 53 “chop shops” in Los Angeles alone. Because all car owners benefit from the disruption of car theft rings, the National Bureau of Economic Research concludes that one auto theft is eliminated annually for every three Lojack systems installed in central cities.<sup>40</sup> Lojack is relatively expensive at \$695, but new competition from GM’s OnStar tracking system is lowering the price.

Given the range of effective and affordable options available, there is no longer a need for audible car alarms in New York City.

### ALTERNATIVES TO AUDIBLE ALARMS

Type	Brands	Price	Pros	Cons
Audible car alarms	Viper, Hellfire, Cobra, Hornet	\$200 to \$1,000 including installation	Provides car owner with a sense of security.	Remarkably ineffective and destructive.
Brake pedal or steering wheel lock	UnBRAKEable Auto Lock, The Club	\$30 to \$60	Inexpensive visual deterrent. Works at least as well as audible alarms.	Pro thieves can saw through flimsy steering wheels, or, given time, the brake pedal.
Personal alarm pagers	Autopage, Crimestopper	\$200 to \$400 including installation	Directly alerts owner without waking up the neighborhood.	Some pagers have limited range. Must be within a few blocks of car.
Passive immobilizer	SecuriLock™, SmartKey	Standard feature on many new cars.	Virtually impossible to start the vehicle without a key. Cuts theft rates in half.	Only dealer can replace ignition key— it has a computer chip in it.
GPS vehicle tracking	Lojack, OnStar	\$695	Car (and often the thief) are found. Recovery rate of 95%.	Expensive, but competition is bringing prices down.

<sup>36</sup> Ford Motors, “72 Quadrillion Ways to Keep Your Vehicle,” press release, March 26, 1997

<sup>37</sup> Yvonne Chilik Wollenberg, “High-tech devices cut down on car-snatching,” *Medical Economics*, Sept. 18, 2000, Vol. 77, No. 18, pp. 21

<sup>38</sup> Ian Ayres and Steven D. Levitt, “Measuring Positive Externalities from Unobservable Victim Precaution: An Empirical Analysis of Lojack”, *National Bureau of Economic Research*, Working Paper No. w5928, Feb. 1997, pp. 31

<sup>39</sup> supra n.24

<sup>40</sup> supra n.38

## IV. Car Alarms and the Law

New York has tried to rein in car alarms before. Most recently, in 1993 the city amended the noise code to limit audible car alarms to three minutes of noise and to ban the use of motion sensors, the technology responsible for most false alarms. Unfortunately, these laws have not silenced the city's blaring cars. First, they have proved unenforceable. Police are unwilling to stand around timing alarm noises, and they have no way to verify the type of sensor employed. Second, limiting the duration of an alarm does not eliminate its harm. Even an alarm that sounds for a short time can wake up an entire neighborhood, while a single three-minute alarm can go off many times in succession, creating a public nuisance that, in theory, remains legal. Enforcing the current law would still leave the car alarm problem unsolved.

### **BANNING THEM: LEGALLY ACCEPTABLE**

Recognizing the problem with current laws and citizens' overwhelming unhappiness with alarms, New York's City Council members have often expressed a desire to ban car alarms, yet they have always held back. Some have claimed that a ban would be inconsistent with state laws, especially s2337 of the Insurance Code. Others have worried that a ban would be an "unconstitutional infringement on interstate commerce."<sup>41</sup> Neither of these are serious legal arguments. New York City has the authority to ban the sale, use and installation of audible car alarms according to legal experts (see Appendix B). The real issue is political, not legal. It seems that some City Council members are worried about a backlash from taking away the miniscule discount that New York City car owners receive for installing alarms.

### **BANNING THEM: TECHNICALLY FEASIBLE**

Banning alarms in New York City would not be a serious imposition on either drivers or local businesses that install and service car security devices. Aftermarket alarms can be installed to either activate automatically (called "passive arming") or upon pushing a button on the remote ("active arming"). Alarm installers can switch a device from one installation mode to the other in a few minutes, and most offer this service for free. Car owners with existing alarms could easily comply with a ban by putting their alarm into "active arming" and leaving it off while in the city. Alternately, owners could use the "valet switch," which disables even a passively armed alarm.<sup>42</sup> Drivers with built-in OEM alarms might have a still easier task; some of these alarms go off so rarely that owners could effectively do nothing, and not worry about the ban. Finally, owners could decide to remove their alarms entirely and replace them with something more effective. Since the vast majority of alarm installers already provide other, more effective car security products, their business should not be hurt by a change in law.

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<sup>41</sup> supra n.18

<sup>42</sup> For a full discussion of installation options, see "To Foil a Car Thief," Consumer Reports, Feb. 1997, pp. 20-24

## **RECOMMENDATIONS**

Council member John Liu and others introduced a bill in 2000 to prohibit the sale and installation of audible car alarms in the five boroughs (Int 0194-2002). The bill is currently stalled inside the Committee for Environmental Protection chaired by Queens City Council member James Gennaro. T.A. recommends that this bill be moved through the Committee to public hearing. T.A. also recommends that City Council members strengthen the bill by including a complete ban on the usage of audible car alarms in New York City.

Additionally, police officers, the Department of Transportation, and the Department of Environmental Protection should be empowered to ticket and tow any motor vehicle with a sounding alarm. If a car alarm complaint is received, but the alarm is silent when the authorities arrive, it should be permissible for an officer to make contact with the car to determine if an alarm is active. To encourage compliance, fines for car alarm violations should be significantly increased, and the sale and installation of audible alarms should be prohibited in New York City.

The city should urge state legislators to eliminate the car alarm discount from New York's Insurance Code for any city with a population greater than one million. For enforcement purposes, the State should add a "noise emissions" test to the annual state automobile inspection process. This test would ensure that any audible alarm can be deactivated by the owner (through use of a "valet mode" or an "active arming" installation), a prerequisite for compliance with the local law. Finally, in accordance with the current noise code, police should retain the right to take reasonable and necessary steps to disconnect any audible alarm while it is sounding.

**Appendix A:** Car Alarm Noise Cost Model

**Appendix B:** Legal Authority of City to Ban Audible Car Alarms

# Appendix A

## Car Alarm Noise Cost Model\*

March 18, 2003

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### MAIN FINDINGS

The average New York City resident pays a car alarm “Noise Tax” of approximately **\$100 to \$120 per year**.

Car alarms cost New York City **\$400 to \$500 million per year**.

### DEVELOPING A COST MODEL FOR CAR ALARMS

The model below attempts to determine the cost of car alarm noise to the people of New York City. Car alarm noise is a form of pollution known as a “negative externality”: the unexpected and unaccounted-for cost of an economic activity. When a New Yorker buys and installs a car alarm, its price does not account for the health, productivity, property value, and quality of life costs the alarm will impose on the owner’s neighbors. This model provides a simple, straightforward formula to allow us to begin to calculate the cost of audible car alarms in the dense urban environment of New York City.

$(V * APF) * (N * NDI)$  = One minute’s worth of car alarm damage to the average New York City resident.

V = The value of one minute of the average New Yorker’s time.

APF = Aggravation Persistence Factor

N = Alarm noise over and above average street noise. Measured in decibels.

NDI = Noise Depreciation Index

### STEP 1: V

We determine the value of V, the value of one minute’s worth of the average New Yorker’s time. To keep things simple and straightforward, we base this number on income.

Total per-capita income in 1999 for New York City (US Census 2000) = \$33,901

\$33,901 / 365 days = \$92.88 / day

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\* This work is based on a model developed by economist Charles Komanoff and Howard Shaw, Ph. D. in their report, *Drowning in Noise: Noise Costs of Jet Skis in America*. The report was commissioned by the Noise Pollution Clearinghouse and can be found here: <http://www.nonoise.org/library/drowning/>. Komanoff also worked closely with TA to develop the Car Alarm Noise Cost Model in this report. It should be noted that we are still working to hone our Cost Model. Please be sure to refer to the numbers you find in this draft of the report as an "estimate."

There are 1,440 minutes in a 24 hour day.

$\$92.88 / 1,440 \text{ minutes} = 6.5 \text{ cents.}$

**V = 6.5 cents**

When one minute of the average New Yorker's life enjoyment and productivity is destroyed, it costs 6.5 cents.

### **STEP 2: APF**

As our research shows, the type of noise produced by car alarms has a cumulative effect on public health, productivity, property value and quality of life. Personal experience backs this up. An alarm ringing for just two minutes in the middle of the night, for example, can wake a person up for a full hour and ruin a good portion of that person's productivity the next day. Noise research consistently shows that the harm of a loud variable noise goes beyond the one or two minutes that the noise is actually sounding. The Aggravation Persistence Factor (APF) is a number that accounts for the damage that an alarm does above and beyond the time that it is actually sounding. A night-time alarm may have a higher APF than a work-day alarm. For the purposes of this model, we are using 5 as our APF value, assuming that one minute's worth of alarm creates, on average, five minutes worth of stress, damage and aggravation.

V = 6.5 cents

**APF = 5**

$(6.5 \text{ cents} * 5 \text{ APF}) = \mathbf{32.5 \text{ cents.}}$

One minute's worth of car alarm noise destroys 32.5 cents worth of life enjoyment and productivity for the average New Yorker.

### **STEP 3: N**

Next we want to determine how much noise an alarm creates over and above the typical New York City street noise. The U.S. Environmental Protection Agency estimates urban residential areas to have, on average, residual noise levels ranging from 46 to 60 decibels (dBA). The decibel scale, it should be understood, is logarithmic not linear. An increase of 10 dBA represents a doubling in perceived loudness. We will use **53 dBA** as the average background noise level in an urban area.

Many car alarms on the market today boast of their ability to reach sound levels as high as 125 dBA. We must assume that most alarms are not this loud. We also know that if a person is standing right next to the alarm when it sounds, the noise is much louder and more intense than it is for a person 300 feet away. To be conservative, let's say that the average car alarm raises the background noise level to **78 dBA**.

$78 \text{ dBA} - 53 \text{ dBA} = \mathbf{25 \text{ dBA.}}$

Researchers have long noted that variable noise is generally more disturbing to human beings than steady noise, even when the steady noise is louder. Car alarms are a variable noise. In 1970, British

acoustician Douglas Robinson developed a formula to account for the increased impact of variable noise. Robinson's Formula states  $L_{NP} = L_{EQ} + 2.56 * \text{Sigma}$ .  $L_{NP}$  is the Noise Pollution Level, that is, the level at which a constant noise would be as annoying as the varying noise.  $L_{EQ}$  is the mean noise power intensity converted to dBA. And Sigma is the standard deviation of the noise intensity in decibels.

Robinson's Formula increases the impact of the car alarm noise by approximately 10 dBA.

$$25 \text{ dBA} + 10 \text{ dBA} = 35 \text{ dBA}$$

$$N = 35 \text{ dBA}$$

#### **STEP 4: NDI**

The Noise Depreciation Index is a numerical measure of the degree to which additional noise in an environment degrades its utility value. The estimate we use here is 1.0% per dBA. In other words, for each increase of one decibel of noise, a New York City resident's life productivity and enjoyment declines 1%. The Noise Depreciation Index is a well-established concept in measuring the impact of transportation noise and 1% is a conservative NDI figure compared to property value studies done near airports and other studies.<sup>43</sup>

$$NDI = .01$$

#### **STEP 5: HOW MUCH IS A NEW YORK MINUTE REALLY WORTH?**

$(V * APF) * (N * NDI) =$  One minute's worth of car alarm damage to the average New York City resident.

$$(6.5 \text{ cents} * 5) * (35 \text{ dBA} * .01) = \mathbf{11.375 \text{ cents}}$$

One minute's worth of car alarm costs the average New Yorker about 11 and a half cents worth of life enjoyment and productivity.

#### **STEP 6: FACTORING IN T.A.'S SURVEY DATA.**

Transportation Alternatives recently conducted an online survey about car alarms. Over 800 New York City residents responded to the survey. Among other questions, we asked how many car alarms people typically hear each week, and how long each alarm typically lasts. The survey revealed the following:

7.5 = Median number of alarms the average New York City resident hears per week.

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<sup>43</sup> Mark A. Delucchi and Shi-Ling Hsu, "The External Damage Cost of Direct Noise from Motor Vehicles: Details by Urbanized Area," Institute of Transportation Studies, Publication No. UCD-ITS-RR-96-03 (14A), December 1996.

2.5 minutes = Median duration of alarm blast.

$$7.5 * 2.5 = 18.75$$

The average New York City resident endures approximately 18.75 minutes of car alarm noise per week.

$$11.375 \text{ cents / minute} * 18.75 \text{ minutes} = \$2.13$$

Car alarm noise costs the average New York City resident \$2.13 / week.

$$\$2.13 / \text{week} * 52 = \$110.76$$

The average New York City resident pays a car alarm “Noise Tax” of approximately **\$110.76 per year.**

Let’s assume that 50% of New York City’s 8,000,000 residents are deaf, too young, too old or have some other issue that prevents them from ever hearing or being bothered by a car alarm. The affected population is 4,000,000.

$$4,000,000 * \$110.76 = \$443,040,000 / \text{year.}$$

**\$443,040,000** = Annual cost of car alarm damage to New York City residents.

## **STEP 7: INSURANCE DISCOUNT VERSUS THE NOISE TAX**

New York State residents pay, on average, \$189.56 per year for the “comprehensive” portion of their auto insurance.<sup>44</sup> (Comprehensive coverage insures cars against theft, fire, flood, windstorm, vandalism, and falling objects.) These rates are generally much higher in urban areas, where theft is more common. Citywide data for New York are not available; however, we know that in the urban District of Columbia, which had 133 thefts per thousand cars in 2001, the average comprehensive premium was \$227.23.<sup>45</sup> That same year, New York City reported only 18 thefts per thousand cars.<sup>46</sup> It is therefore unlikely that comprehensive rates in the City would be higher than in Washington; still, to be conservative, let’s assume that the rates here are twice the state average: **\$379.12.**

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<sup>44</sup> National Association of Insurance Commissioners, “State Average Expenditures and Premiums for Personal Automobile Insurance in 2000,” provided by the Insurance Information Institute, New York. The rest of a car insurance policy (“no-fault,” liability, uninsured motorists, collision, etc.) is of course much more expensive, but the car alarm discount does not apply to these portions.

<sup>45</sup> Ibid.

<sup>46</sup> The National Insurance Crime reports that 28,998 cars were stolen from Washington, D.C. in 2001, and 34,680 from New York City (“NICB Vehicle Theft Study,” April, 2002). The U.S. Census reports that there are 218,718 privately owned cars in Washington D.C., and 1,897,426 in New York City (U.S. Census Bureau, Census 2000: Supplementary Survey Summary Tables, “Table H041: Tenure by Vehicles Available”).

Though State law does not require it, a number of insurance companies provide discounts on comprehensive coverage for New York City car owners who use car alarms. Some insurance companies, notably MetLife, do not offer discounts for car alarms since there is no evidence that they work to reduce theft. The typical car alarm discount is **5%**.

$$\$379.12 * 5\% = \$18.96.$$

**\$18.96** = Average annual car alarm insurance discount for a New York City car owner.

**\$110.76** = Average annual car alarm cost to all New York City residents.

# Appendix B

## Legal Authority of City to Ban Audible Car Alarms

Mateo Taussig-Rubbo\*

March 13, 2003

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### INTRODUCTION

High ambient noise levels are a steady source of concern to New Yorkers, impacting quality of life in myriad ways. Transportation Alternatives, a non-profit public interest advocacy group, has requested an analysis of the scope of the City of New York's authority to ban or otherwise regulate the source of much noise in the City—the audible motor vehicle alarm.

This memorandum, based upon analysis of relevant constitutional and statutory authority, as well as case law, concludes that the City of New York (the “City”) has authority to ban the sale, use or installation of audible motor vehicle alarms (hereafter “alarms” or “car alarms”). Such a ban would be a valid exercise of the City's police powers, and New York State (the “State”) law expressly contemplates local enforcement with respect to alarms. A ban would not be preempted by or be inconsistent with State law. Were preemption or inconsistency to be found, a local ban may nonetheless be permissible where there are unique local conditions warranting such a variance.

Aside from an outright ban, the City has substantial power to regulate noise, traffic, and parking. The history of ineffective and underenforced regulation surrounding this issue suggests that care will have to be taken to design a workable enforcement mechanism.

### STATE AND CITY LAW ON AUDIBLE CAR ALARMS<sup>47</sup>

State law touches upon audible car alarms in a number of ways. Through the Business Law, the State has prohibited the sale and installation of car alarms where the audible portion of alarm shut does not shut off after three minutes; it further requires that alarms be capable of being activated only by “direct physical contact” or by an “individual remote activation device.” N.Y. Gen. Bus. § 399 (u)(1)(2).<sup>48</sup> The State has exempted installers of car alarms from the general licensing requirement of Article 6-D of the General Business Law. N.Y. Gen. Bus. Law § 69-m(2).

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\* J.D.; consultant to Transportation Alternatives.

<sup>47</sup>Federal law does not restrict regulation in this area. The Noise Control Act of 1972 was intended to protect Americans from “noise that jeopardizes their health or welfare.” 42 U.S.C. s7641 (1998). However, the federal role has been circumscribed, leaving the field to state police powers. See, Steven N. Brautigam, Rethinking the Regulation of Car Horn and Car Alarm Noise: An Incentive Based Proposal to Help Restore Civility to Cities, 19 Colum. J. Envtl. L. 391, 426 (1994).

State law also touches upon car alarms through its regulation of the insurance industry, requiring insurers to keep records of the fire, theft, and comprehensive insurance experience of customers with and without anti-theft devices. The law does not specifically permit or require alarms, but provides that where they are used insurers shall “appropriately modify the premium...for automobiles with such devices, to reflect reduced exposure to risk.” N.Y. Insur. Law § 2337 (b). The section further provides that the premium reduction shall be “based solely on sound actuarial practices and limited only by sound actuarial determinations,” and thus is not an automatic discount. N.Y. Insur. Law § 2337 (b).

The State Vehicle and Traffic Law specifically permits the legislative body of local governments to serve a notice of a violation “of any local law or ordinance relating to the prevention of noise pollution” caused by an alarm owner over whom the City has jurisdiction. N.Y. Veh. & Traf. Law §1640(a)(21). State law has prohibited a gong or siren whistle used on other than an emergency vehicle, but states that this prohibition does not apply to those designed solely as a burglar alarm on a vehicle. N.Y. Veh & Traf. Law § 375(1). Thus State law expressly contemplates local regulation of car alarms.

The City has also exercised jurisdiction over car alarm noise in the context of its efforts to reduce ambient noise levels through a comprehensive Noise Control Code (the “Noise Code”). New York, N.Y. Admin. Code, ch 2. § 24-201 to § 24- 269 (2003). Section 24-221 of the Noise Code mirrors the State’s requirements but applies to operation. It provides that all alarms in operation must shut off after three minutes and shall only be activated by direct physical contact or through a remote activation device. Police officers are empowered to disconnect an active alarm, and tow the vehicle if they are unable to do so and unable to contact the owner. The burden is placed on the vehicle operator to assist in this regard by displaying the telephone number of their local police precinct, which in turn shall have been provided with the owner’s contact information. New York, N.Y. Admin. Code, ch 2. § 24-221(d), (f), (g), (h).

## **DISCUSSION**

Despite these provisions, everyday experience in the City suggests that the problem of car alarms unnecessarily disturbing the public peace has not been solved. State and local regulation often touch upon the same area where, as here, the State has not evinced a desire to exclude local regulation or developed a comprehensive scheme for dealing with an issue. There is most likely no legal impediment to the City developing further restrictions, including a ban, to address the issue.

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<sup>48</sup> “§399-u. Motor vehicle alarms. 1. On and after the effective date of this section, all devices offered for sale or installed in the state as alarms for motor vehicles shall be equipped and shall function so that the audible portion of the alarm resets and ceases to sound not more than three minutes after it is activated and commences sounding. No audible burglar alarm in a motor vehicle shall be capable of being activated except by (a) direct physical contact with that motor vehicle or (b) through the use of an individual remote activation device that is designed to be used with the motor vehicle alarm system of a particular vehicle so long as the alarm activated by such device ceases to sound within not more than three minutes. 2. A violation of the provisions of this section shall constitute an offense punishable by a fine of not more than one hundred dollars for the first offense and not more than two hundred fifty dollars for a second or subsequent offense.” N.Y. Gen Bus. Law § 399 (u).

## **CITY POWER TO REGULATE NOISE**

The constitutional home rule provision grants broad police powers to local governments relating to the welfare of their citizens, including the “safety, health, and well-being of persons or property” and the management of highways, roads and streets. N.Y. Const. Art. IX, § 2(c)(6)(10).<sup>49</sup> See also, for e.g., Municipal Home Rule Law, Art. 2. §10(1)(ii)(a)(12). This includes the power to adopt a noise control ordinance. *People v. New York Trap Rock*, 456 N.Y.S.2d 711, 714 (1982) (finding town noise ordinance authorized under both Municipal Home Rule Law and Town Law). The State contemplates local government enforcement of local noise laws in the context of car alarms, although it does not expressly authorize a ban. N.Y. Veh. & Traf. Law § 1640(a)(21).

## **REASONABLENESS STANDARD FOR EXERCISE OF POLICE POWER**

A ban would likely be authorized as arising from the City’s police powers.

In general, local laws passed pursuant to police power affecting private property must have a “substantial relation to matters within the field where legislative power is vested” and “must be reasonably calculated to achieve a legitimate public purpose.” *Good Humor Corp. v. City of New York*, 49 N.E.2d 153, 155 (1943). “The restraint and control exercised over the citizen must be reasonable in light of the public necessity involved” and to invalidate police power legislation, “it must be shown, a matter of law, that the legislation not justifiable under any permissible interpretation of the facts, as a reasonable exercise...” 20 N.Y. Jur. Const. Law. § 221 (citing 20 N.Y. Jur. Const. Law. § 220; *Rudack v. Valentine*, 122 N.Y.S.2d 78 (1937), *aff’d* 125 N.Y.S.3d 112). A ban on the sale, installation and operation of alarms pursuant to the City’s police powers would meet these conditions. The City has power over noise regulation, and a ban on car alarms has a substantial relation to this power.

A ban may, however, be subject to a higher burden. In the context of an absolute ban on “activities” courts will often expect a showing “that the abuses associated with the acts prohibited are general and difficult to control by regulation and that they cause or threaten injury to the public which is so serious that the municipality might reasonably believe it outweighs the harm that would be caused to some by complete prohibition.” *People v. Federico*, 409 N.Y.S.2d 177 (App. Term 1978); 20 N.Y. Jur. Const. Law. § 239.

It is unlikely that this higher standard would apply. The ban considered here leaves untouched the use of non-audible alarms and other safety equipment. In this respect it is not an all-encompassing ban on a class of equipment. Nor is it obviously a ban on an “activity” (such as using a power blower or landing a boat, as discussed in the case law) but is narrowly focused. See, *People v.*

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<sup>49</sup> The New York Constitution provides that “In addition to powers granted in the statute of local governments or any other law (i) every local government shall have power to adopt and amend laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government” and “(ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such local law relating to other than the property, affairs of such local government” relating to, *inter alia*, the “protection, order, conduct, safety, health and well-being of persons or property therein .” N.Y. Const. Art. IX, § 2(c).

Edinger, 683 N.Y.S.2d 820 (N.Y. City Ct., 1998); Federico, 409 N.Y.S.2d 177. However, if the factors articulated in Federico were applied, a ban on alarms would nonetheless likely be sustained given the serious impact of alarm noise, the futility of prior regulation, and the negligible benefits alarms provide their owners and the existence of alternative equipment.

### **REASONABLENESS IN EXERCISE OF POWER OVER TRAFFIC**

Alternatively, a ban on car alarms could be construed as a regulation pursuant to the State Vehicle and Traffic Law as it would touch upon cars coming to the City from throughout the State. Section 1640 grants the legislative body of any city or village the power to make specific laws relating to their streets. The City may, for example, prohibit the parking or standing of vehicles. N.Y. Veh. & Traf. Law § 1640(a)(2). Additionally, the City may adopt “such additional reasonable local laws, ordinances, orders, rules and regulations with respect to traffic as local conditions require subject to the limitations contained in the various laws of this state.” N.Y. Veh. & Traf. Law § 1640(a)(16).

Reasonableness under this provision is evaluated by (1) comparing the proposed action with the specific local actions allowed in the statute, (2) evaluating whether “adequate and useful” alternatives exist for motorists in light of the proposed action, (3) considering whether the proposed classification of vehicles is discriminatory and (4) analyzing whether the action has some “relation to the public safety, convenience or necessity.” *People v. Grant*, 306 N.Y. 258 (1954).

These factors of “reasonableness” are useful to bear in mind as they derive from efforts to regulate vehicles both from within a city and those traveling through it and thus might be used to challenge a ban. A ban on audible car alarms would likely be found reasonable in light of these considerations, although regulation pursuant to the police power would be more intuitive.

### **STATE HAS NOT PREEMPTED LOCAL REGULATION**

The preemption doctrine “represents a fundamental limitation on home rule powers” as it preserves the “untrammelled primacy of the Legislature to act...with respect to matters of State concern.” *Albany Area Builder’s Ass’n v. Town of Guilderland*, 547 N.Y.S.2d 627, 629 (1989) (internal quotations and citations omitted). Preemption arises both where there is “express conflict” and where the State has evidenced a desire to “occupy the field.” *Id.*, at 629.

The State may have occupied the field, and thus preempted all local legislation whether inconsistent or not, based on express claims to preemption, a need for uniformity, or from the “nature of the subject matter being regulated and the purpose and scope of the State legislative scheme.” *Id.*, at 629. A “comprehensive detailed statutory scheme” may indicate implied preemption. *Id.*, at 629.

The State Business Law concerning car alarms does not expressly preempt local regulation and nor has the State evidenced a desire to occupy the field through comprehensive regulation or a detailed scheme. Nor does the State Insurance Law expressly preempt local regulation. N.Y. Insur. Law § 2337. The car alarm provision does not permit car alarms but rather provides that when they are used, that insurers shall take the effect they have into account in setting premiums. Nor has the State implicitly preempted all local regulation of insurance. See, for e.g., *United Car & Limousine*

Foundation, Inc. v. New York City Taxi and Limousine Com'n, 680 N.Y.S.2d 815 (Sup. 1998) (minimum state liability insurance coverage did not preempt higher City minimum to address local traffic conditions).

The State has expressly requested uniformity in the context of traffic regulation (although allowing the City to supercede State law in certain respects). N.Y. Veh & Traf. Law § 1640, 1642. And the State, acting on its own, could ban car alarms. Most importantly, however, the State has expressly permitted local regulation and enforcement of noise ordinances that address car alarms “over which the city or village has jurisdiction upon the owner of the motor vehicle” and provides that such notice shall be affixed to the window in a conspicuous place. N.Y. Veh & Traf. Law § 1640 (a)(21).

Even where there is preemption with respect to one regulatory area, it need not preclude every area that it incidentally touches upon. See, *People v. New York Trap Rock Corp.* 456 N.Y.S.2d 711, 714 (1982) (“that an ordinance has some connection with a subject upon which a State statute exists does not automatically vitiate on that account”); *JJJ Realty Corp. v. Costello*, 658 N.Y.S.2d 92 (1997) (State’s preemptive scheme covering installation, maintenance and abandonment of oil storage tanks did not bar local zoning law concerning use of such tanks).

Where there is some potential overlap or conflict, this is of “little moment” as the home rule provisions are “designed to make local government more responsive to the needs of particular localities” and that “wherever practicable” the Municipal Home Rule Law “encourages reconciliation of State and local rules.” *New York Trap Rock*, 456 N.Y.S. at 714 (citing Municipal Home Rule Law, § 51).

## **BAN ON OPERATION, SALE, AND INSTALLATION NOT INCONSISTENT WITH STATE LAW**

Where the State has not preempted local regulation, local law must nonetheless not be inconsistent with State law. A ban on the operation of car alarms would not be inconsistent, although it would prohibit the operation of alarms that the State does not prohibit.

Local laws can make unlawful what is not prohibited by State law. The expansive rule, sometimes stated, that inconsistency lies where “local law prohibits what State law would allow” is “meritless... This statement of the law is much too broad. If this were the rule, the power of local governments to regulate would be illusory.” *Jancyn Mfg. Corp. v. Suffolk County*, 524 N.Y.S.2d 8, 12 (1987) (internal citations and quotations omitted).

The expansive understanding of inconsistency applies only where there is preemption or when the State “specifically permits the conduct prohibited at the local level.” *Id.*, at 12. See, e.g., *In Vatore v. Commissioner of Consumer Affairs of City of New York*, 612 N.Y.S.2d 357 (1994) (local law restricted cigarette vending machines, making unlawful what was lawful under State law, nonetheless not inconsistent with State law); *In People v. Judiz*, 38 N.Y.2d 529, 531 (State prohibition of possession with intent of imitation guns does “not mean that local efforts to further control use [or sale] through direct prohibition upon possession [of toy guns] itself is precluded”).

Thus the mere fact that the City may ban what is not unlawful for the State is not an infirmity unless the state specifically permits it or there is preemption. The state has not specifically permitted the operation of alarms and has not preempted the city in this area of regulation.

State law does contemplate that car alarms may be installed and sold, and seeks to restrict these devices in the manner described above. This contemplation does not take the form of a specific permission, but rather a restriction that is silent as to whether the product may be sold or installed. N.Y. Gen. Bus. § 399 (u). As there is no specific permission to sell or install the devices, local ability to further restrict the sale or installation is permissible. This view is supported by Veh. & Traf. Law §1640, which permits enforcement of local noise regulations with respect to alarms.

### **INCONSISTENT LOCAL LAW MAY BE PERMISSIBLE WHERE SPECIAL LOCAL CONDITIONS**

If it were determined, however, that there was an inconsistency with State law, or that there was State preemption, a City ban may still be permissible where based on special local conditions. See, e.g., *People v. Cook*, 34 N.Y.2d at 110 (1974) (noting in dicta that “where inconsistency with a general State law is shown, a local law will be upheld, despite the inconsistency, if there is a special local problem supporting the variance”).<sup>50</sup>

In analyzing local inconsistency under this rubric, courts have considered unique features of City life, noting, for example, that window bars designed to prevent children from falling are a response to the “unique problem in the sheer numbers of children at risk ...[in] large multi-story dwellings.” *People v. Nemadi*, 531 N.Y.S.2d 693, 700 (1988). Or, in the case of insurance for taxis, finding that City traffic justifies higher insurance levels due to the increased risk of accident. *United Car & Limousine Foundation, Inc. v. New York City Taxi and Limousine Com’n*, 680 N.Y.S.2d 815 (Sup. 1998); see *In Matter of Kress & Co. v. Dept. of Health*, 27 N.E.2d 431, 432 (1940) (“[a] municipality which is empowered to adopt health regulations may, in spite of general regulations by the State, adopt additional regulations or requirements where there is a real distinction between the city and other parts of the State. They must be based upon special conditions existing in the city”); *People v. Ortiz* 479 N.Y.S.2d 613, 621, 619 (1984) (a local law banning possession of knives four inches or longer is not inconsistent with state law prohibiting weaponry with unlawful intent, but rather supplements the State Penal Law with “additional reasonable requirements” that are in “response to a serious and persistent urban problem”).

The City, because of its density and high levels of ambient noise, would likely be found to present special conditions that distinguish it from the rest of the State with respect to car alarms.

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<sup>50</sup> In *People v. Wieback*, 577 N.Y.S.2d215 (1985), the Suffolk County Judge noted in dicta that *Cook* had been negated by *Matter of Town of Islip v. Cuomo*, 64 N.Y.2d 50 (1984), but this seems not to have been the case. *Islip* did not address whether special local conditions could justify a variance to state law, as there was no local law at issue. Rather, *Islip* concerned whether the State could act upon local matters without enacting a special law. The court found that even though the State statute touched only upon two counties, it was nonetheless a general law as it sought to protect the sole source aquifer, was thus of State concern, and thus could be passed as a general, not special law. The “rule is that ‘if the subject matter of the statute is of sufficient importance to the State generally to render it a proper subject of State legislation...the State may freely legislate, notwithstanding the fact that the concern of the State may also touch upon local matters.’” *Islip* 64 N.Y.2d at 56 (citations omitted).

[An] alarm combines in its person all that is objectionable about a fire, a riot, and a harem, and at the same time has none of the compensating advantages, of one sort or another, that customarily belong with that combination. — Mark Twain<sup>51</sup>

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<sup>51</sup> Mark Twain, “The McWilliamses and the Burglar Alarm [1882]”, in The Complete Short Stories of Mark Twain, Bantam Books, New York, 1957, pp.198.

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