

CHARTER ORDINANCE NO. 224

A CHARTER ORDINANCE EXEMPTING THE CITY OF WICHITA, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-4112, 12-4203, 12-4208, 12-4212, 12-4213, 12-4305, 12-4410, 12-4411, 12-4509, 12-4511, 12-4516 AND 12-4156a AND AMENDMENTS THERETO RELATING TO MUNICIPAL COURT PROCEDURES AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS OF THE SAME SUBJECT AND REPEALING CHARTER ORDINANCES 122, 163, 164, 167, 168, 170, 175, 199, 202, 204, 210, 217, 218 AND 220.

SECTION 1. Be it ordained by the governing body of the City of Wichita, Kansas, a Council-Manager City of the first class, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself from, and makes inapplicable to it the provisions of K.S.A. 12-4112; 12-4203; 12-4208; 12-4212; 12-4213; 12-4305; 12-4410; 12-4411; 12-4509; 12-4511; 12-4516 and 12-4516a; and amendments thereto, and provides substitute and additional provisions as hereinafter set forth in this ordinance. Such referenced provisions are either enactments or a part thereof which are applicable to this city, but are not applicable uniformly to all cities.

SECTION 2. Municipal Court Costs. (a) Costs may be assessed against accused persons for the administration of justice in any municipal court case where:

- (1) the accused person is found guilty; or
- (2) the accused person pleads guilty; or
- (3) the accused person has failed to comply with a traffic citation as set forth by ordinance.

The costs shall be assessed in accordance with the terms contained in Section 1.04.070 of the Code of the City of Wichita, Kansas, and amendments thereto.

(b) If it appears to the court that the prosecution was instituted without probable cause and for malicious motives, the court may require the complaining witness or other person instituting the prosecution to appear and answer concerning that person's motives for instituting the prosecution. If upon hearing the court determines that the prosecution was instituted without probable cause and from malicious motives, all costs in the case shall be assessed against the complaining witness or other person initiating the prosecution.

(c) At the conclusion of each municipal case, the court shall, where applicable, assess the costs against the responsible party.

SECTION 3. Law Enforcement Officer's Power to Make an Arrest. A law enforcement officer may arrest a person when:

(a) The officer has a warrant commanding that such person be arrested; or

(b) The law enforcement officer has no warrant, but a warrant for the person's arrest has been issued by a municipal court in this state; or

(c) The officer has probable cause to believe that the person is committing or has committed a violation of an ordinance and that the person has intentionally inflicted bodily harm to another person; or

(d) The law enforcement officer, having no warrant, has detained such person when:

(1) The officer has probable cause to believe that the person is committing or has committed a violation of a municipal ordinance and that such person will not be apprehended or evidence of the violation of the ordinance will be irretrievably lost unless such person is immediately detained, or such person may cause injury to self or others or damage to property unless immediately detained; or

(2) Any violation of an ordinance has been or is being committed by such person in the officer's view; and any of the following conditions also exist:

(A) such person refuses to give a written promise to appear in court when served with a notice to appear; or

(B) such person is unable to provide identification of self to the reasonable satisfaction of the law enforcement officer; or

(C) such person is not a resident of the State of Kansas; or

(D) the law enforcement officer has probable cause to believe that such person may cause injury to self or others or may damage property unless immediately arrested.

(e) Any misdemeanor, except a traffic infraction, that has been or is being committed by the person in the officer's view and such misdemeanor has been designated specifically by the Chief of Police, with the approval of the municipal judge, as an offense for which an arrest shall be made.

SECTION 4. Persons under arrest; procedures, right to post bond, release on personal recognizance.

(a) Any person arrested by a law enforcement officer shall be taken immediately by the law enforcement officer to the police station or detention facility of the City or to a location in the City designated by the municipal judge. At that time, the person shall have the right to post bond for the person's appearance in accordance with K.S.A. 12-4301 and K.S.A. 12-4302, and amendments thereto, except as hereinafter provided.

(b) A law enforcement officer may detain a person arrested for violation of a municipal ordinance in protective custody for a period not to exceed six hours, including custody in a city or county jail, if such officer has probable cause to believe that: (1) such person may cause injury to oneself or others, or damage to property; and (2) there is no responsible person or institution to which such person might be released. Any person so held in protective custody shall be permitted to consult with counsel or other persons who may act on such person's behalf. Such person held in protective custody for six hours shall be given an opportunity to post bond for such person's appearance in the municipal court.

(c) Any person held in custody pursuant to the provisions of this section, and who has not made bond for such person's appearance, may be held in custody until the earliest practical time for such person's appearance in municipal court upon a warrant being issued by the municipal court in accordance with K.S.A. 12-4209, and amendments thereto.

(d) Any person who remains in custody for 48 hours pursuant to the provisions of this section after arrest, and who is awaiting a first appearance before a municipal judge in the absence of a warrant being issued, shall be released on the person's personal recognizance. Bond shall be set within 18 hours of the person being placed in custody.

SECTION 5. Schedule of Fines for Violation of Certain Ordinances.

(a) The chief municipal judge shall establish a schedule of fines which shall be imposed for municipal ordinance violations that are classified as ordinance traffic infractions. Also, the municipal judge may establish a schedule of fines which shall be imposed for the violation of certain other ordinances. Such fines shall be imposed upon a voluntary entry of appearance and upon a plea of guilty or no contest to a complaint alleging such violation. Any fine so established shall be within the minimum and maximum allowable fines established by ordinance for such offenses by the governing body. The following traffic violations are specifically excluded from any schedule of fines:

- (1) Reckless driving;
- (2) Driving while under the influence of alcohol or drugs;
- (3) Driving on a suspended or revoked license; and
- (4) Refusal of a blood or alcohol test following conviction.

(b) The municipal judge may authorize the Clerk of the Municipal Court or some other person to accept such voluntary appearance by mail or in person, plea of guilty or no

contest and payment of the fine imposed by the schedule. Payment may be made by mail or in person and may be made by any method accepted by the City of Wichita and at any location authorized by the chief judge. The complaint shall not have been complied with if a check is not honored for any reason, or the fine is not paid in full prior to the time specified in the notice to appear. When a person charged with an ordinance traffic infraction or other ordinance violation on a schedule of fines makes payment by mail without executing a written waiver of right to trial and plea of guilty or no contest, the payment shall be deemed such an appearance, waiver of right to trial and plea of no contest.

(c) The schedule of fines and persons authorized to accept such pleas shall be conspicuously displayed in the office where such voluntary appearance, plea of guilty and payment of fines occur.

(d) Whenever any person has been found guilty of a violation of city ordinance upon a verdict or plea, the court may suspend the imposition of the sentence, but in no event shall the total period of suspension of sentence exceed the maximum term provided by ordinance for the violation.

SECTION 6. Procedure for Discovery. The code of criminal procedure shall govern, insofar as applicable, the procedure for discovery. Depositions shall not be taken or used except by written agreement of both parties filed with the court or by order of the court and subject to the code of criminal procedure, insofar as applicable.

SECTION 7. Court Costs and Establishing Court Costs for Post-Conviction Motions.

(a) All parties shall be entitled to the use of subpoenas to compel attendance of witnesses within the state. The municipal court judge or clerk or any person so authorized by the judge's written authorization shall issue a subpoena which may be served by a law enforcement officer upon the named persons. Disobedience may constitute contempt.

(b) Fees and mileage of subpoenaed witnesses shall be assessed in the amount set forth in Section 1.04.070 of the Code of the City of Wichita, Kansas, and amendments thereto. The fees and mileage for the attendance of witnesses shall be assessed as costs; provided, the municipal judge may direct that fees and mileage of witnesses subpoenaed by the accused person be charged against such person if the judge finds that there has been abuse of the use of subpoenas by the accused person.

(c) Whenever any motions or applications for the post-conviction remedies are filed, the cost for filing such motion or application shall be assessed in the amount set forth in Section 1.04.070 of the Code of the City of Wichita, and amendments thereto. The cost shall be paid by the person filing such motion or application. Provided, however, that if it be shown to the court that the person filing such motion or application is indigent, the court may, in its discretion, waive the costs provided for herein and the court shall make a finding of indigency and shall note upon the motion, application or order resulting therefrom that the costs referred to herein have been waived.

SECTION 8. Warrant; contents; form. A warrant shall contain the name of the accused person, or if unknown, any name or description by which the accused person may be identified with reasonable certainty, shall describe the nature of the violation of an ordinance of the City, shall command that the accused person be arrested, shall be signed by the judge of the municipal court, and shall state the amount of the appearance bond to be required. A warrant shall be deemed sufficient if substantially in the form set forth in K.S.A. 12-4208, and amendments thereto; and a warrant shall be deemed valid if ordered by the municipal court judge and issued electronically by the court's computer system. Further, the requirement that the judge sign the warrant shall be sufficiently fulfilled if the electronically issued warrant is printed and signed by the judge after the arrest of the accused person.

SECTION 9. Preparation and service of complaints, notices to appear, and warrants.

(a) In the event that the form of citation provided for in K.S.A. 12-4205 and amendments thereto includes a written statement of the essential facts constituting a violation of an ordinance of the City of Wichita, Kansas, as required by law and as prepared and signed by the law enforcement officer of the City of Wichita or other official designated by the Code of the City of Wichita to enforce ordinances, then such citation, when filed with the Clerk of the Municipal Court, shall be deemed a lawful complaint for the purpose of prosecution under this ordinance.

(b) A copy of the complaint shall be served, together with a notice to appear or a warrant, by a law enforcement officer or other official or person designated by the Code of the City of Wichita to enforce ordinances upon the accused person, and the complaint shall forthwith be filed with the Municipal Court except that a complaint may be filed initially with the municipal court and, if so filed, a copy of the complaint shall forth with be delivered to the City Attorney.

(c) If the City Attorney fails either to cause a notice to appear or to request a warrant to be issued on a complaint initially filed with the municipal court, the municipal judge may, upon affidavits filed with such judge alleging the violation of an ordinance, order the City Attorney to institute proceedings against any person. Any such municipal judge shall be disqualified from sitting in any case wherein such order was entered and is further prohibited from communicating about such case with any other municipal judge or municipal judge pro tem appointed to preside therein.

(d) Electronic citations may be issued by law enforcement officers in compliance with K.S.A. 12-4115 et. seq.

SECTION 10. The municipal judge may parole any person confined to jail as a result of a conviction of a violation of a City ordinance and may set such conditions and restrictions of such parole as the judge sees fit to impose, for a term of parole not exceeding two years, and may at any time discharge such person for good cause shown; provided, however, that nothing herein shall authorize or empower the municipal judge to grant parole to any person confined to jail as a result of a conviction of a violation of a City ordinance which provides for a mandatory, minimum sentence of imprisonment, before such person has served such minimum sentence.

The term of parole ordered by the court is subject to renewal and extension for additional periods not exceeding an additional two years for any misdemeanor case upon the municipal court's finding that the defendant has not yet successfully completed the conditions imposed therein within the original term of such parole.

After notice and hearing, the municipal judge may revoke such parole for violation of conditions by directing the Chief of Police or the warrant office to execute the sentence and again confine the accused person to jail for the time specified by the court, which shall not exceed the initial jail sentence imposed, less the time served.

SECTION 11. (a) Whenever a person is found guilty of the violation of an ordinance, the municipal judge may, unless otherwise required by law to impose a mandatory, minimum sentence or fine, imprisonment, or both: (1) release the person without imposition of sentence; (2) release the person on probation after the imposition of sentence, without imprisonment or the payment of a fine or a portion thereof, subject to conditions imposed by the court; (3) impose a sentence of house arrest as provided for in K.S.A. 21-6609, and amendments thereto; or (4) impose such sentence of fine, imprisonment or both, as may be authorized for the ordinance violation.

(b) Whenever a person is found guilty of the violation of an ordinance and there is evidence that the act constituting the violation of the ordinance was substantially related to the possession, use or ingestion of a cereal malt beverage or an alcoholic beverage by such person, the judge may, in addition to the disposition authorized by subsection (a), order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge or licensed by the Secretary of Social and Rehabilitation Services or the Secretary of the Department for Children and Families.

(c) Except as provided in subsection (d), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having violated, while under 21 years of age, Section 4.04.017, 4.04.040, 11.38.158 or Chapter 5.26 of the Code of the City of Wichita, and amendments thereto, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the judge finds that the person is indigent, the fee may be waived.

(d) If the person is 18 or more years of age, but less than 21 years of age and is convicted of a violation of Section 4.04.017, and amendments thereto, involving cereal malt beverage, the provisions of subsection (c) are permissive and not mandatory;

(e) In addition to any other sentence authorized by law, whenever a person is convicted of any criminal offense, the municipal judge shall determine whether the defendant committed a domestic violence offense, as defined by Section 1.06.010. If the judge determines that the defendant has committed a domestic violence offense, the court shall place a domestic violence designation on the criminal case and shall sentence the defendant, in addition to any conditions set forth in paragraph (f) below, to undergo a domestic violence offender assessment

conducted by a certified batterer intervention program and follow all recommendations made by such program unless otherwise ordered by the court. The court may order a domestic violence offender assessment prior to sentencing if the assessment or evaluation would assist the court in determining an appropriate sentence. The entity completing the assessment or evaluation shall provide the assessment or evaluation and recommendations to the court and the court shall provide the domestic violence offender assessment to any entity responsible for supervising such defendant. A defendant ordered to undergo a domestic violence offender assessment shall be required to pay for the assessment and, unless otherwise ordered by the court, for completion of all recommendations.

The court shall not place a domestic violence designation on the criminal case and the defendant shall not be subject to the provisions of this section only if the court finds on the record that:

(1) the defendant has not previously committed a domestic violence offense or participated in a diversion upon a complaint alleging a domestic violence offense; and

(2) the domestic violence offense was not used to coerce, control, punish, intimidate or take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family or household member.

(f) The court may impose any conditions of probation or suspension of sentence that the court deems proper, including, but not limited to, requiring that the defendant:

(1) Avoid such injurious and vicious habits, as directed by the court or the probation officer;

(2) avoid such persons or places of disreputable or harmful character, as directed by the court or the probation officer;

(3) report to the probation office as directed;

(4) permit the probation officer to visit the defendant at home or elsewhere;

(5) work faithfully at suitable employment insofar as possible;

(6) remain within the state unless the court grants permission to leave;

(7) pay a fine or costs, applicable to the ordinance violation, in one or several sums and in the manner as directed by the court;

(8) support the defendant's dependents;

(9) reside in a residential facility located in the community and participate in educational counseling, work and other correctional or rehabilitative programs;

(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;

(12) make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court; or

(13) reimburse the city, in accordance with any order made under subsection (g), for all or part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant.

(g) In addition to or in lieu of any other sentence authorized by law, whenever a person is found guilty of the violation of an ordinance the judge may order such person to reimburse the city for all or a part of the reasonable expenditures by the city to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the services provided, the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment.

SECTION 12. Expungements of Convictions. For the purposes of this section, expungement means the sealing of records such that they are unavailable except to the petitioner and criminal justice agencies as provided by K.S.A. 22-4701 *et seq.* and amendments thereto and except as provided by this Code.

(a) Except as otherwise provided by this section, any person who has been convicted of a violation of a City ordinance of this Code may petition the municipal court for the expungement of such conviction and related arrest records if three (3) or more years have elapsed since the person:

(1) satisfied the sentence imposed; or

(2) was discharged from probation, parole or a suspended sentence.

(b) Except as otherwise provided by this section, any person who has fulfilled the terms of a diversion agreement based on a violation of a City ordinance of this state may petition the court for the expungement of such diversion agreement and related arrest records if three (3) or more years have elapsed since the terms of the diversion agreement were fulfilled.

(c) Any person convicted of the violation of a City ordinance which would also constitute a violation of K.S.A. 21-3512, prior to its repeal, or a violation of K.S.A. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence; and

(2) Such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, "coercion" means: threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

(d) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of a city ordinance which would also constitute:

(1) Driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto and Section 11.42.030 of the Code of the City of Wichita;

(2) Failing to stop at the scene of an accident and perform the duties required by Sections 11.12.010 through 11.12.050 of the Code of the City of Wichita, and amendments thereto;

(3) A violation of the provisions of Section 11.13.010 of the Code of the City of Wichita, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(e) No person may petition for expungement until ten (10) or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of the violation of Section 11.38.150 of the Code of the City of Wichita, and amendments thereto relating to Driving Under the Influence of Alcohol and/or Drugs.

(f) There shall be no expungement of convictions or diversions for a violation of Section 11.38.155 of the Code of the City of Wichita, and amendments thereto relating to the Driving of a Commercial Vehicle while Under the Influence of Alcohol and/or Drugs.

(g) There shall be no expungements of any conviction or any part of the offender's criminal record for any offender who is required to register as provided by the Kansas Offender

Registration Act, K.S.A. 22-4001, *et seq.*, while the offender is required to register as provided in the Kansas Offender Registration Act.

(h) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state the:

- (1) Defendant's full name;
- (2) Full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;
- (3) Defendant's sex, race and date of birth;
- (4) Crime for which the defendant was arrested, convicted or diverted;
- (5) Date of the defendant's arrest, conviction or diversion; and
- (6) Identity of the convicting court, arresting law enforcement agency or diverting authority.

(i) The municipal court shall prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section.

(j) Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(k) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

- (1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;
- (2) The circumstances and behavior of the petitioner warrant the expungement; and
- (3) The expungement is consistent with the public welfare.

(l) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The Clerk of the Municipal Court shall send a certified copy of the order of expungement to the Kansas Bureau of Investigation which shall notify the Federal Bureau of Investigation, the Secretary of Corrections and any other criminal justice agency which may have a record of the

arrest, conviction or diversion. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) The petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 75-12a01, and amendments thereto, of the Department for Children and Families;

(B) In any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) To aid in determining the petitioner's qualifications for employment with the Kansas Lottery or for work in sensitive areas within the Kansas Lottery as deemed appropriate by the executive director of the Kansas Lottery;

(D) To aid in determining the petitioner's qualifications for executive director of the Kansas Racing and Gaming Commission, for employment with the commission or for work in sensitive areas in pari-mutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) To aid in determining the petitioner's qualifications for the following under the Kansas Expanded Lottery Act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) Upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) To aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) To aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issue pursuant to a tribal-state gaming compact;

(I) In any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) In any application for employment as a law enforcement officer, as defined in K.S.A. 22-2202 or K.S.A. 74-5602, and amendments thereto; or

(m) To aid in determining the petitioner's qualifications for a license to carry a concealed weapons pursuant to the Personal and Family Protection Act, K.S.A. 75-7c01 et seq., and amendments thereto;

(1) The court, in the order of expungement, may specify other circumstances under which the arrest, conviction or diversion is to be disclosed; and

(2) The conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged.

(n) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation, is placed on parole or probation or is granted a suspended sentence for such a violation, the person shall be informed of the ability to expunge the arrest records, or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(o) Subject to the disclosures required by this section, in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of an offense has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such offense.

(p) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) A private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) A court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) The Secretary of the Department for Children and Families, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department for children and families of any person whose record has been expunged;

(5) A person entitled to such information pursuant to the terms of the expungement order;

(6) A prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) The Supreme Court, the clerk or disciplinary administrator thereof, the state Board for Admission of Attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) The Kansas Lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas Lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas Lottery;

(9) The governor or the Kansas Racing and Gaming Commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in pari-mutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) The Kansas Racing and Gaming Commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for the following under the Kansas Expanded Lottery Act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) The state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) to be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(12) The Kansas Securities Commissioner, or a designee of the Commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(13) The Attorney General, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the Personal and Family Protection Act;

(14) The Kansas Sentencing Commission;

(15) The Kansas Commission on Peace Officers' Standards and Training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 *et seq.*, and amendments thereto; or

(16) A law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto.

SECTION 13. Expungement of Arrest Records. (a) Any person who has been arrested on a violation of a City ordinance of this state may petition the court for the expungement of such arrest record. For the purposes of this section, expungement means the sealing of records such that they are unavailable except to the petitioner and criminal justice agencies as provided by K.S.A. 22-4701 *et seq.* and amendments thereto and except as provided by this Code.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state:

- (1) The petitioner's full name;
- (2) The full name of the petitioner at the time of arrest, if different than the petitioner's current name;
- (3) The petitioner's sex, race and date of birth;
- (4) The crime for which the petitioner was arrested;
- (5) The date of the petitioner's arrest; and
- (6) The identity of the arresting law enforcement agency.

A municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding:

- (1) The arrest occurred because of mistaken identity;
- (2) A court has found that there was no probable cause for the arrest;
- (3) The petitioner was found not guilty in court proceedings;

(4) The expungement would be in the best interests of justice and:

(A) charges have been dismissed; or

(B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The Clerk of the Municipal Court shall send a certified copy of the order to the Kansas Bureau of Investigation which shall notify the Federal Bureau of Investigation, the Secretary of Corrections and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interest of public welfare, the records should be available for any of the following purposes:

(1) In any application for employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Department of Social and Rehabilitation Services;

(2) In any application for admission, or for an order of reinstatement, to the practice of law in this state;

(3) To aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas Lottery as deemed appropriate by the executive director of the Kansas Lottery.

(4) To aid in determining the petitioner's qualifications for executive director of the Kansas Racing Commission, for employment with the commission or for work in sensitive areas in pari-mutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) In any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(6) To aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) To aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) In any other circumstances which the court deems appropriate.

(f) The court shall make all expunged records and related information in such court's possession, created prior to, on and after July 1, 2011, available to the Kansas Bureau of Investigation for the purpose of:

(1) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(2) Providing information or documentation to the Federal Bureau of Investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(g) Subject to any disclosures required under subsection (e), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

(h) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose arrest record was expunged.

SECTION 14. The originals of Charter Ordinances Nos. 122, 163, 164, 167, 168, 170, 175, 199, 202, 204, 210, 217, 218 and 220 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 15. This ordinance shall be published once each week for two consecutive weeks in the official city paper.

SECTION 16. This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3) of the Constitution of Kansas, in which case, the ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED BY THE GOVERNING BODY, not less than two-thirds of the members elect voting in favor thereof this 6th of January, 2015.

Carl Brewer
Mayor

ATTEST: (Seal)

Karen Sublett
City Clerk

Approved as to Form:

Sharon L. Dickgrafe
Interim Director of Law