

(Published in the Topeka Metro News April 11, 2016)

ORDINANCE NO. 19990

AN ORDINANCE introduced by City Manager Jim Colson, concerning expungement of certain convictions in municipal court, amending City of Topeka Code § 2.110.660 and repealing original section.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

Section 1. That section 2.110.660, Expungement of certain convictions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Expungement of certain convictions.

(a) Expungement.

(1) Except as provided in subsections (b), (c), (d), ~~and (e)~~, (f) and (g) of this section, any person who has been convicted of a violation of an ordinance of the city of Topeka may petition the municipal court for the expungement of such conviction and related arrest records if three or more years have elapsed since the person:

(i) Satisfied the sentence imposed; or

(ii) Was discharged from probation, parole or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d), ~~and (e)~~, (f) and (g) of this section, any person who has fulfilled the terms of a diversion agreement based on a violation of an ordinance may petition the court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

27 **(b)** Any person convicted of a violation of any ordinance that is prohibited by
28 K.S.A. 12-16,134(a) or (b) and amendments thereto, and which was adopted prior to
29 July 1, 2014, or who entered into a diversion agreement in lieu of further criminal
30 proceedings for such violation, may petition the court for the expungement of such
31 conviction or diversion agreement and related arrest records.

32 **(b̄c)** Any person convicted of the violation of an ordinance which would also
33 constitute a violation of K.S.A. 21-3512, prior to its repeal, or a violation of K.S.A. 21-
34 6419, and amendments thereto, or who entered into a diversion agreement in lieu of
35 further criminal proceedings for such violation, may petition the municipal court for the
36 expungement of such conviction or diversion agreement and related arrest records if:

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

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

46 **(ēd)** No person may petition for expungement until five or more years have
47 elapsed since the person satisfied the sentence imposed or the terms of a diversion
48 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) Vehicular homicide, as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 21-5406, and amendments thereto;

(2) 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;

(3) Perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto;

(4) A violation of the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications;

(5) Any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) Failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and amendments thereto;

(7) A violation of the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) A violation of K.S.A. 21-3405b, prior to its repeal.

(de) No person may petition for expungement until ~~40~~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~~a first violation of an ordinance

72 which would also constitute a first violation of K.S.A. 8-1567 or 8-1025, and
73 amendments thereto.

74 (f) No person may petition for expungement until 10 or more years have
75 elapsed since the person satisfied the sentence imposed or was discharged from
76 probation, parole, conditional release or a suspended sentence, if such person was
77 convicted of a second or subsequent violation of an ordinance which would also
78 constitute a second or subsequent violation of K.S.A. 8-1567 or 8-1025, and
79 amendments thereto.

80 (eg) There shall be no expungement of convictions or diversion for a violation
81 of an ordinance which would also constitute a violation of K.S.A. 8-2,144 and
82 amendments thereto.

83 (fh) When a petition for expungement is filed, the court shall set a date for a
84 hearing thereon and shall give notice thereof to the prosecuting attorney. The petition
85 shall state: (1) the defendant's full name; (2) the full name of the defendant at the time
86 of arrest, conviction or diversion, if different than the defendant's current name; (3) the
87 defendant's sex, race, and date of birth; (4) the crime for which the defendant was
88 arrested, convicted, or diverted; (5) the date of the defendant's arrest, conviction, or
89 diversion; and (6) the identity of the convicting court, arresting law enforcement agency
90 or diverting authority. The municipal court may prescribe a fee to be charged as costs
91 for a person petitioning for an order of expungement pursuant to this section. Any
92 person who may have relevant information about the petitioner may testify at the
93 hearing. The court may inquire into the background of the petitioner and shall have

94 access to any reports or records relating to the petitioner that are on file with the
95 secretary of corrections or the prisoner review board.

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

98 (1) The petitioner has not been convicted of a felony in the past two
99 years and no proceeding involving any such crime is presently pending or being
100 instituted against the petitioner;

101 (2) The circumstances and behavior of the petitioner warrant the
102 expungement; and

103 (3) The expungement is consistent with the public welfare.

104 (hj) When the court has ordered an arrest record, conviction or diversion
105 expunged, the order of expungement shall state the information required to be
106 contained in the petition. The clerk of the court shall send a certified copy of the order of
107 expungement to the Kansas Bureau of Investigation which shall notify the Federal
108 Bureau of Investigation, the secretary of corrections and any other criminal justice
109 agency which may have a record of the arrest, conviction, or diversion. After the order
110 of expungement is entered, the petitioner shall be treated as not having been arrested,
111 convicted or diverted of the crime, except that:

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

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

117 (i) In any application for licensure as a private detective, private
118 detective agency, certification as a firearms trainer pursuant to K.S.A. 75-
119 7b21, and amendments thereto, or employment as a detective with a
120 private detective agency, as defined by K.S.A. 75-7b01, and amendments
121 thereto; as security personnel with a private patrol operator, as defined by
122 K.S.A. 75-7b01, and amendments thereto; or with an institution, as
123 defined in K.S.A. 76-12a01, and amendments thereto, of the Department
124 for ~~Children and Families~~ Aging and Disability Services;

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

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

131 (iv) To aid in determining the petitioner's qualifications for
132 Executive Director of the Kansas Racing and Gaming Commission, for
133 employment with the Commission or for work in sensitive areas in
134 parimutuel racing as deemed appropriate by the Executive Director of the
135 Commission, or to aid in determining qualifications for licensure or renewal
136 of licensure by the Commission;

137 (v) To aid in determining the petitioner's qualifications for the
138 following under the Kansas Expanded Lottery Act:

(A) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or

(B) An officer, director, employee, owner, agent or contractor thereof;

(vi) Upon application for a commercial driver's license under K.S.A. 8-2125 through 8-2142, and amendments thereto;

(vii) To aid in determining the petitioner's qualifications to be an employee of the state Gaming Agency;

(viii) 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;

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

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

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

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

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

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

172 (jl) Subject to the disclosures required pursuant to subsection (hi) of this
173 section, in any application for employment, license or other civil right or privilege, or any
174 appearance as a witness, a person whose arrest records, conviction, or diversion of an
175 offense has been expunged may state that such person has never been arrested,
176 convicted, or diverted of such offense.

177 (km) Whenever the record of any arrest, conviction, or diversion has been
178 expunged, the custodian of the records of arrest, conviction, diversion and incarceration
179 relating to that crime shall not disclose the existence of such records, except when
180 requested by:

- 181 (1) The person whose record was expunged;
- 182 (2) A private detective agency or a private patrol operator, as defined
183 by K.S.A. 75-7b01, 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~~Aging and Disability Services, 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~~Aging and Disability Services 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 parimutuel 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 of the following under the Kansas Expanded Lottery Act:

(i) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and

(ii) 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: (i) to be an employee of the state Gaming Agency; or (ii) 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 for employment as a law enforcement officer; 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.

Section 2. That original § 2.110.660 of The Code of the City of Topeka, Kansas, is hereby specifically repealed.

Section 3. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 4. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 5. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the City Council on April 5, 2016.

CITY OF TOPEKA, KANSAS

ATTEST:

Larry E. Wolgast, Mayor

Brenda Younger, City Clerk