

(Published in the Topeka Metro News December 12, 2016)

ORDINANCE NO. 20037

AN ORDINANCE introduced by Interim City Manager Douglas Gerber, concerning merchant private police license regulations, amending City of Topeka Code § 5.90.010, § 5.90.110, § 5.90.120, § 5.90.130, § 5.90.140, and § 5.90.170 and repealing original sections and repealing § 5.90.050 in its entirety.

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

Section 1. That section 5.90.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

“Chief of police” means the chief of police of Topeka, Kansas, or his or her designee.

“Conviction” shall mean a finding of guilty of the commission of a criminal offense as specified herein, ~~and but shall not include expunged convictions, diversions, deferred prosecutions and juvenile offender adjudications~~ the following:

(1) a charge for which a person has successfully completed a diversion;

(2) a charge that resulted in a deferred judgement for a juvenile under the age of 18; and

(3) a conviction that has been expunged or pardoned pursuant to the law of any applicable jurisdiction.

“Crime of violence: means:

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

27 **(b) any other offense that is a felony or misdemeanor and that, by its nature,**
28 **involves a substantial risk that physical force against the person or property of another**
29 **may be used in the course of committing the offense.**

30 “Employee, agent, and guard” means all persons employed by a private security firm in
31 the conduct of business, except employees whose duties are confined entirely to
32 stenographic, clerical or management duties in the business office of the private
33 security firm or other employees not directly engaged in providing protection and
34 preserving the peace.

35 ~~“Firearms” means (a) a pistol or revolver which is designed to be fired by the use of a~~
36 ~~single hand and which is designed to fire or is capable of firing fixed cartridges; or (b)~~
37 ~~any other weapon which will or is designed to expel a projectile by the action of any~~
38 ~~explosive and which is designed to be fired by the use of a single hand.~~

39 ~~“Intimate partner” shall have the meaning ascribed to it by 18 U.S.C. Section 921(a)(32),~~
40 ~~and amendments thereto.~~

41 ~~“Law enforcement officer” means a law enforcement officer as defined by K.S.A. 21-~~
42 ~~3110, and amendments thereto.~~

43 “License” means the license to act as a private security firm or to act as an employee,
44 agent or guard of a private security firm issued by the chief of police.

45 ~~“Misdemeanor crime of domestic violence” shall have the meaning ascribed to it by 18~~
46 ~~U.S.C. Section 921(a)(33), and amendments thereto.~~

47 “Police department” means the Topeka, Kansas, police department.

48 “Private detective” means any person who engages in detective business as defined by
49 K.S.A. 75-7b01, and amendments thereto.

50 “Private security firm” means any person or company that conducts or is engaged in the
51 business of providing protection and preserving the peace of one or more
52 establishments.

53 Section 2. That section 5.90.050, Use of firearms, of The Code of the City of
54 Topeka, Kansas, is hereby repealed.

55 **Use of firearms.**

56 ~~(a) Licensees under this chapter may have the right to carry firearms only after~~
57 ~~completion of a firearm proficiency process under the direction and control of the police~~
58 ~~department or a suitable alternative process approved by the chief of police. The~~
59 ~~authority to carry a firearm will be extended only while the licensee is performing the~~
60 ~~required duties of employment and while en route to or from the place of business.~~
61 ~~Certification will be granted by the chief of police after the licensee passes a written and~~
62 ~~practical test demonstrating knowledge of applicable laws concerning use of force,~~
63 ~~firearms safety, fundamentals of shooting, and operation and maintenance of firearms,~~
64 ~~administered by the chief of police or a suitable alternative testing process approved by~~
65 ~~the chief of police. The chief of police shall provide information on guidelines and source~~
66 ~~material from which the written test will be derived. Written tests will be developed and~~
67 ~~maintained by the chief of police or a suitable alternative testing process approved by~~
68 ~~the chief of police. Licensees and their companies will be notified of pass/fail of such~~
69 ~~tests. Licensees shall also be required to complete the firearms proficiency process~~
70 ~~annually to retain their license to carry a firearm. No person convicted of a felony or~~
71 ~~ineligible under federal law to own or possess firearms shall be licensed by the city to~~

72 ~~carry firearms. The right to carry a firearm may be revoked by the chief of police if the~~
73 ~~right has been abused.~~

74 ~~(b) The police department is authorized to charge \$25.00 to the licensee's~~
75 ~~employer for the test required by this section.~~

76 ~~(c) It shall be unlawful for licensees under this chapter to draw or fire a firearm in~~
77 ~~the performance of their duties except when they reasonably believe that such force is~~
78 ~~necessary to prevent death or great bodily harm to themselves or another.~~

79 Section 3. That section 5.90.110, Application, of The Code of the City of
80 Topeka, Kansas, is hereby amended to read as follows:

81 **Application.**

82 (a) Applicants for a license as a private security firm, or employee, agent or
83 guard of a private security firm, shall file an application with the chief of police on forms
84 to be prepared by the chief of police and supplied by the police department for that
85 purpose. The application form shall ask, but not be limited to, the following:

86 (1) If an applicant for a license as a private security firm:

87 (i) The applicant's name, address, race, sex, date of birth,
88 telephone number and Social Security number;

89 (ii) A description of the nature and type of business to be
90 conducted;

91 (iii) The services to be offered and the area expected to be covered
92 in the conduct of the business; and

93 (iv) A statement as to the number and type of vehicles to be used in
94 the conduct of the business and a description thereof; ~~and~~

95 ~~(v) A description of the type of weapons to be used on the job.~~

96 (2) If an applicant for a license as an agent or an employee of a private
97 security firm:

98 (i) The applicant's name, address, race, sex, date of birth,
99 telephone number and Social Security number; and

100 (ii) The name of the person or firm by whom the applicant is to be
101 employed.

102 (b) Each applicant as designated in subsection (a) of this section shall also
103 file with the application:

104 (1) A statement as to whether or not ~~within 20 years immediately~~
105 ~~preceding the date of making the application~~ the applicant has been convicted
106 ~~(including any expunged convictions or taken a diversion or deferred prosecution,~~
107 ~~or adjudication as a juvenile) of any felony or misdemeanor, the nature of the~~
108 ~~offense, the disposition of the case including the penalty or punishment imposed,~~
109 ~~and the date and place where such offense occurred~~ of the crimes identified in
110 TMC Section 5.90.140(a) within the time periods prescribed in that section;

111 (2) A statement as to whether or not the applicant has ~~ever~~ had a
112 judgment ~~or conviction~~ entered against the applicant for fraud, deceit or
113 misrepresentation within ten (10) years immediately preceding the date of
114 application and, if so, the details thereof; and

115 (3) A statement as to the business or employment records of such
116 applicant for the three years immediately preceding the date of application.

117 Section 4. That section 5.90.120, Temporary license permit, of The Code of
118 the City of Topeka, Kansas, is hereby amended to read as follows:

119 **Temporary license permit.**

120 (a) The chief of police or his or her designee is hereby authorized to issue a
121 temporary license permit to an applicant as an employee, agent, or guard of a private
122 security firm upon the following conditions:

123 (1) The private security firm gives written notice of intent to employ the
124 applicant;

125 (2) The applicant submits a completed application for a license to the
126 police department;

127 (3) The police department makes a security check and certifies the
128 applicant eligible for a temporary private security guard license; and

129 (4) The payment of a fee as prescribed in TMC 5.10.160 and
130 amendments thereto for a private security employee, agent or guard temporary
131 license will be paid to the police department at the time of application.

132 (b) The temporary license issued under this section shall be effective for a
133 period of up to 60 days and shall be subject to suspension or revocation for the same
134 reasons as business licenses and employee, agent or guard licenses. A temporary
135 license issued under this section may be extended for not more than two additional 60-
136 day periods at the discretion of the chief of police. ~~The temporary license shall not give~~
137 ~~the authority to carry a firearm until the licensee has complied with TMC 5.90.050 and~~
138 ~~amendments thereto.~~ An application for a temporary license permit shall be accepted or
139 rejected by the police department within one working day of the time it is submitted.

140 Section 5. That section 5.90.130, Licensing procedure - Appeals, of The Code
141 of the City of Topeka, Kansas, is hereby amended to read as follows:

142 **Licensing procedure – Appeals.**

143 (a) Applications and the attached forms are to be completed in full. The
144 applicant shall return the completed application and forms to the police department. The
145 chief of police shall, after receipt of the completed application, direct that the applicant's
146 qualifications be investigated. Upon completion of the investigation, the chief of police
147 shall approve or disapprove the application. The chief of police may, at any time during
148 the approval procedure, seek the advice or recommendations of the city attorney's
149 office.

150 (b) The chief of police is authorized to promulgate all necessary rules and
151 regulations concerning the review and processing of private security firm, employee,
152 agent or guard applications. The rules and regulations so promulgated shall be with the
153 approval of the city attorney.

154 (c) If the chief of police denies the application for a license under this chapter,
155 the chief of police shall promptly notify the applicant of the action. Within 10 days after
156 receiving notice from the chief of police that his or her application for a private security
157 guard license has been disapproved or denied, the applicant may appeal in writing to
158 the council for a hearing on the matter. The issue in any appeal from a denial pursuant
159 to TMC 5.90.140(a)(1) through (8) shall be limited to determining whether the facts
160 supporting the disapproval or denial of the license are correct.

161 Section 6. That section 5.90.140, Qualifications – Denial, suspension or
162 revocation of licenses – Procedure – Appeals – Emergency suspensions, of The Code
163 of the City of Topeka, Kansas, is hereby amended to read as follows:

164 **Qualifications – Denial, suspension or revocation of licenses – Procedure –**
165 **Appeals – Emergency suspensions.**

166 (a) The chief of police may deny an application, or suspend or revoke a
167 license issued to:

168 (1) Any person under 18 years of age; ~~provided, however, that no~~
169 ~~person between the age of 18 and 21 years of age shall be authorized to carry a~~
170 ~~firearm;~~

171 (2) Any person convicted of a felony ~~within 20 years immediately~~
172 ~~preceding the date of application, or released or discharged from incarceration~~
173 ~~on probation, parole, post-release supervision or any other form of conditional or~~
174 ~~unconditional release for such conviction within five years immediately preceding~~
175 ~~the date of application;~~

176 (3) Any person convicted to ~~two or more class A or class B~~
177 ~~misdemeanors within 10 years immediately preceding the date of application.~~
178 ~~Offenses classified as class A or class B misdemeanors by Chapter 8 of the~~
179 ~~Kansas Statutes Annotated or K.S.A. 40-3104, and amendments thereto, or any~~
180 ~~city ordinance or county resolution in conformity therewith, shall not disqualify an~~
181 ~~otherwise qualified applicant unless they are convictions of driving under the~~
182 ~~influence of intoxicating liquor or drugs, driving a commercial vehicle under the~~
183 ~~influence of intoxicating liquor or drugs, refusing a preliminary breath test,~~

~~tampering with an ignition interlock device, or fleeing or attempting to elude a~~
~~police officer;~~of any of the following crimes within ten (10) years prior to the date
of the application:

- (a) a crime involving dishonesty or fraud;
- (b) a crime involving the use of a firearm;
- (c) a crime of violence; or
- (d) a crime involving any controlled substance.

~~(4) In the case of a private security firm, if any officer, director or~~
~~principal stockholder who is directly involved in the management of the business~~
~~and who has access to sensitive client information has been convicted as~~
~~provided in subsection (a)(2) or (a)(3) of this section;~~

~~(54)~~ Any person who is subject to a court order that restrains such
person from harassing, stalking, or threatening others or an intimate partner of
such person or child of such intimate partner or person, or engaging in other
conduct that would place others or an intimate partner in reasonable fear of
bodily injury to the partner or child, except that this subsection shall only apply to
a court order that:

(i) Was issued after a hearing of which such person received
actual notice, and at which such person had the opportunity to participate;
and

(ii)(A) Includes a finding that such person represents a credible
threat to the physical safety of others or an intimate partner or child; or

(B) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against others or an intimate partner or child that would reasonably be expected to cause bodily injury.

~~(6) Any person that has been convicted in any court of assault, battery, or a misdemeanor crime of domestic violence within 10 years immediately preceding the date of application;~~

~~(75) Any person against whom a judgment or conviction for fraud, deceit or misrepresentation, or a conviction for theft has been entered within (ten) 10 years immediately preceding the date of application or a juvenile conviction or adjudication for theft has been entered within five years immediately preceding the date of application;~~

(6) Any person who provides false or incomplete information or fails to provide any requested information on his/her application.

~~(8) Any person who has a record of one or more convictions for controlled substance abuse, or a record of violent acts against persons within 10 years immediately preceding the date of application.~~

~~(9) Any person with a known mental condition which might adversely affect the public safety while in the performance of a private security guard in providing public safety. A statement provided by a licensed Kansas psychologist or psychiatrist attesting to the person's mental fitness may be provided at the applicant's or licensee's expense if such a condition is given as a reason for rejection. Any rejection, suspension, or revocation based on mental condition shall be withdrawn upon submission of such letter.~~

229 ~~(10) Violations of any federal or state statute or city ordinance the chief~~
230 ~~of police deems to make the applicant or licensee unfit to handle the~~
231 ~~responsibilities of the license, falsification of the application or supporting~~
232 ~~documents, or violation of any of the provisions of this chapter.~~

233 (b) It shall be unlawful for any person holding a license or temporary license
234 to fail to report to their employer, or for any employer to fail to report to the chief of
235 police within five business days, any ~~charge, arrest, judgment, or conviction, or~~
236 ~~sentencing or diversion~~ for an criminal act set forth in subsection (a) of this section that
237 constitutes a reason for denial or an application or suspension or revocation of a
238 license.

239 (c) The procedure for appealing from denial of an application for a license
240 shall be as specified in TMC 5.90.130(c).

241 (d) Prior to suspending or revoking a license issued under this chapter, the
242 chief of police shall issue written notice to the licensee at their last known address of the
243 reasons for the proposed suspension or revocation and an opportunity for a hearing on
244 the matter. Except as provided by subsection (f) of this section, the hearing shall be
245 scheduled for not more than 14 days from the date of the notification, and the licensee
246 shall be notified of the date, time and location of the hearing. The licensee may appear
247 in person, or by counsel, or both. The chief of police may continue the hearing in his or
248 her discretion. After the hearing, the chief of police shall issue an order either revoking
249 or suspending the license or declining to revoke or suspend the license and the reasons
250 therefor. The chief of police shall serve a copy of the order on the licensee.

251 (e) Any person or firm that has their license suspended or revoked by the
252 chief of police may appeal the decision to the ~~city council~~governing body by filing a
253 written notice of appeal with the city clerk within 10 days of receipt of the order
254 suspending or revoking the license. If a timely appeal is filed, the ~~council~~governing body
255 shall hold a hearing and the person or firm appealing may present any evidence and be
256 heard with respect to the allegations that resulted in suspension or revocation by the
257 chief of police. The licensee may, concurrently with appeal of the suspension or
258 revocation, request in writing that imposition of suspension or revocation be stayed
259 pending the outcome of the appeal. If both the notice of appeal and request for stay are
260 timely filed with the city clerk, imposition of the suspension or revocation shall
261 automatically be stayed, pending the outcome of the appeal. The ~~city council~~governing
262 body shall either affirm or reverse the suspension or revocation, or remand the matter to
263 the chief of police for further proceedings.

264 (f) The chief of police, with the approval of the city attorney, may use
265 emergency proceedings to suspend a license in any situation involving an immediate
266 danger to the public health, safety or welfare requiring immediate action. The chief of
267 police may take only such action as is necessary to prevent or avoid the immediate
268 danger to the public health, safety or welfare that justifies use of emergency
269 adjudication. The chief of police shall render an order, including a brief statement of
270 findings of fact, conclusions of law and policy reasons for the decision if it is an exercise
271 of chief of police's discretion, to justify his or her decision to take the specific action and
272 the determination of an immediate danger. The chief of police shall give such notice as
273 is practicable to persons who are required to comply with the order. The order is

effective when rendered. After issuing an order pursuant to this section, the chief of police shall proceed as quickly as feasible to complete any proceedings pursuant to subsection (c) of this section that would be required if the matter did not justify the use of emergency proceedings.

Section 7. That section 5.90.170, Identification cards, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Identification cards.

(a) The chief of police shall issue an identification card to each approved applicant which shall be worn prominently by the licensee at all times while on duty as a uniformed private security employee, agent, or guard. Nonuniformed private security employees, agents, or guards shall wear prominently their identification card unless doing so would be detrimental to their current assignment. Private security employees, agents, or guards shall carry their identification card at all times while working for the private security firm, and shall display it upon the request of any police officer. The identification card shall be approximately two and one-half inches by four inches and shall include the following information:

- (1) The type of license and expiration date thereof; and
- (2) Name, business, address, physical description and picture of the licensee; and
- (3) The name of the employer if the licensee is an agent or employee of a private security firm; and
- (4) The signature of the licensee and that of the chief of police; and

296 (5) ~~A statement as to whether or not the licensee is authorized to carry~~
297 ~~a firearm; and~~

298 (6) Such other information as the chief of police may deem advisable.

299 (b) The chief of police is hereby authorized to collect from each applicant the
300 sum of \$10.00 for each new or replacement identification card or license issued.

301 Section 8. That original § 5.90.010, § 5.90.110, § 5.90.120, § 5.90.130, §
302 5.90.140, and § 5.90.170 of The Code of the City of Topeka, Kansas, are hereby
303 specifically repealed.

304 Section 9. This ordinance shall take effect and be in force from and after its
305 passage, approval and publication in the official City newspaper.

306 Section 10. This ordinance shall supersede all ordinances, resolutions or rules,
307 or portions thereof, which are in conflict with the provisions of this ordinance.

308 Section 11. Should any section, clause or phrase of this ordinance be declared
309 invalid by a court of competent jurisdiction, the same shall not affect the validity of this
310 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

311 PASSED AND APPROVED by the City Council on December 6, 2016.

312 CITY OF TOPEKA, KANSAS

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Larry E. Wolgast, Mayor

319 ATTEST:

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324 Brenda Younger, City Clerk