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ORDINANCE NO. 237

A CHARTER ORDINANCE EXEMPTING THE CITY OF WICHITA, KANSAS FROM THE PROVISIONS OF K.S.A 12-4111, 12-4113, 12-4202, 12-4203, 12-4204, 12-4207, 12-4208, 12-4210, 12-4211, 12-4212, 12-4215, 12-4516, AND 12-4516a AND AMENDMENTS THERETO RELATING TO MUNICIPAL COURT PROCEDURES AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS OF THE SAME SUBJECT AND REPEALING SECTIONS 3, 8, 12 AND 13 OF CHARTER ORDINANCE 224 AND ALL SECTIONS OF CHARTER ORDINANCE 229.

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

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. 12-4111, 12-4113, 12-4202, 12-4203, 12-4204, 12-4207, 12-4208, 12- 4210, 12-4211, 12-4212, 12-4215, 12-4516, and 12-4516a, and amendments thereto, and provide substitute and additional provisions as hereinafter set forth in this ordinance. Such referenced provisions are either enactments or a part of an enactment, which are applicable to this City, but are not applicable uniformly to all cities.

SECTION 1. Section 1 is hereby created to read as follows:

“Definitions.

In addition to the definitions contained in K.S.A. 12-4113, which are incorporated herein by reference, the following terms shall have the following meanings:

- a. "Complaint" means a sworn written statement or a written statement of the essential facts constituting a violation of an ordinance signed by a law enforcement officer, community service officer, parking control officer or other official designated by the Code of the City of Wichita to enforce ordinance violations.
- b. "Community Service Officer" is an employee of the City of Wichita who is designated pursuant to the provisions of Section 11.16.040(c) to enforce ordinance violations of Title 11 of the Code of the City of Wichita. Except as provided by K.S.A. 22-2403 and amendments thereto, such employees are not authorized to arrest or detain individuals.
- c. "Court Services Officer" is an employee of the City of Wichita who is authorized to serve notices to appear, complaints, citations, maintain or assert custody or supervision over persons accused or convicted of a crime and execute arrest warrants issued by a Wichita Municipal Court Judge. Such persons may also detain or arrest individuals as authorized by K.S.A. 22-2403. For the purposes of executing municipal court warrants as set forth above, a court services officer may detain such persons, place them in custody and arrest them pursuant to a Wichita Municipal Court warrant. Such arrests may only take place in the Wichita Municipal Court for individuals who have surrendered themselves to the court on the warrant or have otherwise appeared before the Municipal Court. Court Services Officers are authorized to fingerprint individuals arrested on Municipal Court warrants as described in this section, or as otherwise directed by a Wichita Municipal Court Judge and, as required, transport such individuals to or from the

Sedgwick County Adult Detention Facility. Court services officers may release individuals from custody as directed by a Wichita Municipal Court Judge. Court Service officers are not authorized to enforce any ordinance violations of this code.

- d. "Electronic citation" means a charging citation, complaint or notice to appear which is prepared by a law enforcement officer, community service officer, parking control officer, or other official designated by the Code of the City of Wichita to enforce ordinance violations on an electronic data device with the intent that data collected will be electronically filed with the Municipal Court as provided for by the provisions of K.S.A. 12-4201 through 12-4207, and amendments thereto, for the prosecution of a municipal ordinance violation. The data elements collected shall conform with the requirements of K.S.A. 12-4201 through 12-4207 and amendments thereto or the requirements of the Secretary of Revenue or the Secretary's designee pursuant to K.S.A. 79-3393 and amendments thereto, as applicable.
- e. "Electronic Citation System" means the device, database or computer software used to create, store, transmit or exchange the data included in an electronic citation, notice to appear or complaint.
- f. "Electronic signature" means any electronic method of signing a document that meets the following requirements:
 - 1. Identifies and authenticates a particular person as the signer of the document, is unique to the person using it, is capable of certification, and is under the sole control of the person using it.

2. Is attached to or logically associated with the document in such a manner that if the document is altered in any way without authorization of the signer, the signature is invalid.
 3. Indicates that person's intent to issue, enter or otherwise authenticate the document.
 4. An electronic signature indicated by the law enforcement officers or other designated official's typed name and agency identification number has the same effect and is as sufficient as a manual signature.
- g. "Entered" means filed with the Clerk of the Municipal Court. A document may be entered in either paper form or electronic form.
- h. "Filing or filed" means:
1. When the document is in paper form, delivering the original document to the Clerk of the Municipal Court. Filing is complete when the Clerk of the Municipal Court receives the original document.
 2. When the document is in electronic form, creating and saving the document, or transmitting it, in such a way that it is unalterably retained in the electronic records of the Clerk of the Municipal Court. A document is "unalterably retained" in an electronic record when it may not be edited or otherwise altered except by a person with authorization to do so. Filing is complete when the document has first been unalterably retained in the electronic records of the Clerk of the Municipal Court.
- i. "Issued" applies to documents in either paper form or electronic form. A document that is first created in paper form is issued when it is signed. A document that is

first created in electronic form is issued when it is signed, filed with the Clerk of the Municipal Court and retained in the Electronic Repository.

j. "Original" means:

1. A document first created and existing only in paper form, bearing the original signature of the person who signed it. The term also includes each copy in paper form that is printed through the facsimile transmission of the copy bearing the original signature of the person who signed it.
2. A document existing in electronic form, including the electronic form of the document and any copy that is printed from the electronic form.

k. "Parking Control Officer" means an employee of the City of Wichita who is designated pursuant to Section 11.16.040(d) of the Code of the City of Wichita to enforce parking ordinance violations of the City of Wichita. Except as provided by K.S.A. 22-2403 and amendments thereto, such employees are not authorized to arrest or detain individuals.

l. "Process Server" means an individual designated by or contracted with the City of Wichita to serve Municipal Court notices to appear, summons, citations or complaints and who are properly authorized by the Sedgwick County District Court pursuant to K.S.A. 60-303(d)(3), and amendments thereto, to serve as an appointed process server. Such individual does not have the authority to arrest or detain an individual. Except as provided by K.S.A. 22-2403 and amendments thereto, such persons are not authorized to arrest or detain individuals.

m. "Signature" means any symbol, including but not limited to, the name of an individual, which is executed by that individual, personally or through an authorized agent, with the intent to authenticate or to effect the issuance or entry of

a document. The term includes an electronic signature. A document may be signed by the use of any manual, mechanical or electronic means that causes the individual's signature to appear in or on the document. Any party challenging the validity of a signature shall have the burden of pleading, producing evidence and proving the following:

1. The signature was not the act of the person whose signature it appears to be; or
2. If the signature is an electronic signature, the requirements of the Uniform Electronic Transaction Act and/or Kansas Supreme Court Rule 122 have not been met.

n. "Warrant" is a written order made by a Municipal Court Judge directed to any law enforcement officer or court services officer commanding the officer to arrest the person named or described in it."

SECTION 2. Section 2 is hereby created to read as follows:

"Law Enforcement Officers and Court Services Officers – Powers.

a. The governing body of the City of Wichita may employ law enforcement officers who shall have power to execute all process issued by any Municipal Court Judge within the state and deliver to him or her for that purpose, to detain persons, to place them in custody and to arrest them pursuant to the Code of the City of Wichita and the Kansas Municipal Court Procedures Act, K.S.A. 12-4101 *et seq.* and amendments thereto.

The powers of law enforcement officers with respect to the code of criminal procedure shall not be reduced by this Code.

- b.
 1. The governing body of the City of Wichita may employ court services officers who shall have the limited authority to serve process and execute warrants issued by a Wichita Municipal Court Judge. For the purpose of executing these warrants, a court services officer may detain such persons, place them in custody and arrest them pursuant to a valid Wichita Municipal Court warrant. Such arrests may only take place in the Wichita Municipal Court of individuals who have surrendered themselves to the court on the warrant or have otherwise appeared before the Municipal Court.
 2. Court Services Officers are authorized to fingerprint individuals arrested on Municipal Court warrants as described in this section, or as otherwise directed by a Wichita Municipal Court Judge and, as required, transport such individuals to or from the Sedgwick County Adult Detention Facility. Court service officers may release individuals from custody as directed by a Wichita Municipal Court Judge.
 3. Court services officers are authorized to serve and execute summonses, notices to appear, citations, complaints and all other process issued by any Wichita Municipal Court Judge.
 4. Court services officers are not authorized to enforce any provisions of the Code of the City of Wichita or other state or federal laws. Further, such officers are not authorized to execute arrests outside the confines of Wichita Municipal Court or execute warrants issued by other courts or jurisdictions.

5. Court services officers may not detain an individual or execute a warrantless arrest unless authorized by a Wichita Municipal Court Judge or as allowed by K.S.A. 22-2403 and amendments thereto."

SECTION 3. Section 3 of Charter Ordinance 224 is hereby amended to read as follows:

“Power to make an arrest or detain.

- a. A law enforcement officer may arrest a person when:
 1. The officer has a warrant commanding that such person be arrested;
or
 2. The law enforcement officer has no warrant, but a warrant for the person's arrest has been issued by a Municipal Court in the state; or
 3. The officer has probable cause to believe that the person is committing or has committed a violation of an ordinance and that person has intentionally inflicted bodily harm on another person; or
 4. The law enforcement officer having no warrant has detained such person when:
 - A. 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 themselves or

others or damage to property unless immediately detained;

or

B. 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:

i. Such person refuses to give a written promise to appear in court when served with a notice to appear;

or

ii. Such person is unable to provide identification of themselves to the reasonable satisfaction of the law enforcement officer; or

iii. Such person is not a resident of the State of Kansas;

or

iv. The law enforcement officer has probable cause to believe that such person may cause injury to themselves or others or may damage property unless immediately arrested.

5. A law enforcement officer may execute an arrest for any misdemeanor offense, except a traffic or tobacco 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 Court Judge, as an offense for which an arrest shall be made.

- b. In addition to the provisions set forth above, a law enforcement officer may detain a person when:
1. The law enforcement officer has reason to believe that a warrant for the persons arrest has been issued by any municipal court; or
 2. 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 themselves or others or damage to property unless immediately detained; or
 3. Any violation of an ordinance has been or is being committed by such person in his or her view.
- c. A law enforcement officer having detained a person pursuant to the paragraphs (b)(2) or (b)(3) may release the person or may prepare and serve upon such person a complaint and notice to appear, as provided by this code and shall then release such accused person from such detention, except in such instances where the law enforcement officer has power and authority to arrest such accused person as set forth in this code.
- d. A court services officer may arrest or detain a person when:
1. The officer has a warrant issued by a Wichita Municipal Court Judge commanding that such person be arrested and such person has surrendered himself or herself to the Municipal Court on such warrant or has otherwise appeared before the Municipal Court.; or

2. The court services officer has no warrant, but a warrant for the person's arrest has been issued by a Wichita Municipal Court Judge and such person has surrendered himself or herself to the Municipal Court on such warrant or has otherwise appeared before the Municipal Court.
 3. Court services officers may not detain an individual or execute a warrantless arrest unless authorized by a Wichita Municipal Court Judge or as allowed by K.S.A. 22-2403 and amendments thereto.
 4. Except as allowed by K.S.A. 22-2403 and amendments thereto, a court services officer may not execute arrests outside the confines of the Wichita Municipal Court or execute warrants issued by other courts or jurisdictions.
 5. Court services officers may release individuals from custody as directed by a Wichita Municipal Court Judge.
- e. Court services officers are authorized to serve and execute summonses, notices to appear, citations, complaints and all other process issued by any Wichita Municipal Court Judge.
 - f. Court services officers are authorized to fingerprint individuals arrested on warrants issued by a Wichita Municipal Court Judge or as otherwise directed by a Wichita Municipal Court Judge and, as required, transport individuals to or from the Sedgwick County Adult Detention Facility.

SECTION 4. Section 4 is hereby created to read as follows:

“Complaint Requirements.

- a. A complaint shall be in writing and shall be signed either personally or electronically by the complainant. A complaint shall be deemed valid if the complainant has signed, either manually or electronically, the complaint or

an affidavit incorporated into the complaint and/or attached to the complaint.

- b. A complaint shall be deemed "in writing" if the information is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.
- c. More than one violation may be charged in the same complaint. Traffic, tobacco or other infractions, misdemeanor traffic and criminal offenses may be charged on the same complaint or notice to appear.
- d. A complaint is valid if it bears the manual or electronic signature of the law enforcement officer, community service officer, parking control officer, or other official designated by the Code of the City of Wichita to enforce ordinance violations. Such electronic signature must comply with the provisions of this Code.
- e. Except as otherwise provided in this Code, a complaint shall be deemed sufficient if it contains the information and data elements as set forth in K.S.A. 8-2106(b) and/or K.S.A. 12-12-4205a and amendments thereto."

SECTION 5. Section 5 is hereby created to read as follows:

"Complaint How Issued.

- a. A copy of a complaint shall be served, together with a notice to appear or a warrant by a law enforcement officer, court services officer, process server or other official designated by the Code of the City of Wichita to enforce ordinance violations upon the accused person, and forthwith, the complaint shall be filed with the Municipal Court. Additionally, the Municipal Court Administrator, with the concurrence of the Chief Municipal Court Judge

may designate court and probation personnel to serve complaints or notices to appear which have been filed with the court. Such court or probation personnel are not authorized to serve or execute arrest or bench warrants issued by a Municipal Court Judge.

- b. In addition to those individuals set forth in this section to serve citations, notices to appear and complaints, a process server may be approved by the court to serve notices to appear, citations and complaints.
- c. Unless provided for by this Code or state law, city personnel or process servers appointed to serve complaints, citations or notices to appear, pursuant to this Section, do not have the authority to arrest or detain an individual pursuant to an arrest or bench warrant.
- d. The City Attorney shall cause a notice to appear to be issued, unless he or she has good reason to believe that the accused person will not appear in response to a notice to appear, in which case, the City Attorney may request that a warrant be issued. Such warrant will be issued if the complaint is positively sworn to and the Municipal Court Judge has probable cause to believe that (a) there has been the commission of a violation of a municipal ordinance, (b) the accused person committed such violation, and (c) the accused person will not appear in response to a notice to appear.
- e. If a 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 Court Judge may, upon affidavits filed with him or her alleging the violation of an ordinance, order the City Attorney to institute proceedings against any person. Any such Municipal Court Judge shall be

disqualified from sitting in any case wherein such order was entered and is further prohibited from communicating about such case with the Municipal Court Judge *pro tem* appointed by the Municipal Judge to preside therein.”

SECTION 6. Section 6 is hereby created to read as follows:

“Notice to Appear – Contents.

A notice to appear shall describe the offense charged, shall summon the accused person to appear, shall contain a space in which the accused person may agree, in writing, to appear, except as otherwise ordered by the court, at a time not less than five (5) days after such notice to appear is given, unless the accused person shall demand an earlier hearing. A notice to appear may be signed by a Municipal Court Judge, the Clerk of the Municipal Court, the City Attorney, an Assistant City Attorney, a law enforcement officer, a community services officer, a parking control officer or an official designated by the Code of the City of Wichita to enforce ordinance violations.”

SECTION 7. Section 7 is hereby created to read as follows:

“Service – Return.

The notice to appear shall be served upon the accused person by delivering a copy to him or her personally, or by leaving it at the dwelling house of the accused person or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the last known address of said person. A notice to appear may be served by any law enforcement officer, community services officer, parking control officer, court services officer, the Municipal Court Judge, the Clerk of the Municipal Court, and their designees, the City Attorney, an Assistant City Attorney, a private process server approved by the Municipal Court or other individual designated by the Code of the City of Wichita to enforce ordinance violations. If mailed, the notice to

appear shall be mailed by a law enforcement officer, a community services officer, a parking control officer, a court services officer, the Municipal Court Judge, the Clerk of the Municipal Court and their designees, the City Attorney, private process server approved by the Municipal Court or other individual designated by the Code of the City of Wichita to enforce ordinance violations. Upon service by mail, the person serving the notice to appear shall execute a verification to be filed with a copy of the notice to appear. Said verification shall be deemed sufficient if in substantially the following form:

The undersigned hereby certifies that on the ____ day of _____,
_____, a copy of the notice to appear was mailed to
_____ at
_____.

/s/_____
Signature of Person Serving Notice to Appear

SECTION 8. Section 8 of Charter Ordinance 224 is hereby amended to read as follows:

“Warrant – contents.

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 by a law enforcement officer or court services officer, shall be signed by the Municipal Court Judge, and shall state the type and amount of the appearance bond required. A warrant shall be deemed sufficient if substantially in the form set forth in K.S.A. 12-4208, and amendments thereto. 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 warrant is electronically issued with an electronic signature by

the judge or if the electronically issued warrant is printed and signed by the judge after the arrest of the accused person.”

SECTION 9. Section 9 is hereby created to read as follows:

“Warrant – Service.

A warrant may be directed to any law enforcement officer within the state and may be executed any place within the state by the arrest of an accused person. A warrant may be directed to a court services officer and may be executed by the arrest of the accused person who has surrendered himself or herself or otherwise appeared before the Wichita Municipal Court. The officer need not have the warrant in his or her possession at the time of the arrest, but upon request, the officer shall show the warrant to the accused person as soon as possible. If the officer does not have the warrant in his or her possession at the time of the arrest, the officer shall then inform the accused person of the offense charged, of the fact that a warrant has been issued and the amount of the bond required.”

SECTION 10. Section 10 is hereby created to read as follows:

“Electronic citations.

- a. Electronic citations may be issued by law enforcement officers, community service officers, parking control officers or other officials designated to enforce ordinance violations in compliance with K.S.A. 8-2119 and 12-4215 *et seq.* and amendments thereto.
- b. For the purposes of an electronic citation, including the notice to appear and complaint issued under this Section, an electronic signature indicated by the law enforcement officers or other official designated by the Code of the City of Wichita to enforce ordinance violations’ typed name, agency, and agency identification number has the same effect and is

sufficient as a manual signature as required by the provisions of this Code and as required in K.S.A. 8-2106, 8-2108, K.S.A. 12-4202, 12-4204, 12-4207, Subsection (b) of K.S.A. 22-3201 or K.S.A. 79-3393 and amendments thereto.

- c. A notice to appear, complaint or citation as provided by K.S.A. 8-2106, K.S.A. 12-4201 through K.S.A. 12-4207 or K.S.A. 79-3393 and amendments thereto shall be deemed to be written as if on paper form or on a document printed from an Electronic Citation System.
- d. For the purposes of signing a citation or notice to appear as required by this Code or as provided by K.S.A. 8-2106, 8-2107 and 12-4204 and amendments thereto, a person being charged by a law enforcement officer, a community services officer, a parking control officer or other official designated to enforce ordinance violations, shall be deemed to have signed the citation or notice to appear if the person physically signs the paper notice to appear or, in the case of an electronic citation, verbally acknowledges that the person promises to appear on or before the date set at or with the designated court. To secure a verbal promise to appear, the law enforcement officer shall ask, "Do you agree to appear at the Wichita Municipal Court on or before _____ (date)?" The officer shall accurately record the response of the person being charged as: Yes, no, or no response."

SECTION 11. The original of Section 12 of Charter Ordinance 224 is hereby amended to read as follows:

"Expungements of Convictions.

- a. Except as otherwise provided by this section, any person who has been convicted of a violation of a city ordinance 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; and
 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 or deferred judgment agreement based on a violation of an ordinance of the City of Wichita may petition the court for the expungement of such diversion or deferred judgment agreement and related arrest records if three (3) or more years have elapsed since the terms of the diversion or deferred judgment agreement were fulfilled.
- c. Any person convicted of a violation of any ordinance that is prohibited by either K.S.A. 12-16,124(a) or (b) and amendments thereto, and which was adopted prior to July 1, 2014, or who entered into a diversion or deferred judgment agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction, diversion or deferred judgment agreement and related arrest records.
- d. 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 or deferred judgment agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of

such conviction, diversion or deferred judgment 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 or deferred judgment agreement and 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.
- e. 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 or deferred judgment agreement and 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 and Section 11.42.030 of the Code of the City of Wichita;
3. Perjury resulting from a violation of K.S.A. 8-261a and amendments thereto;
 4. A violation of the provisions of K.S.A. 8-142 Fifth, 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 Sections 11.12.010 through 11.12.050 of the Code of the City of Wichita, and amendments thereto;
 7. 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
 8. A violation of K.S.A. 21-3405b, prior to its repeal.
- f. No person may petition for expungement:
1. Until five (5) or more years have elapsed since the person satisfied the sentence imposed and the terms of a diversion or deferred judgment agreement and was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of a first offense 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.
 2. No person may petition for expungement until ten (10) or more years

have elapsed since the person satisfied the sentence imposed and was discharged from probation, parole, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of the provisions 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.

3. The provisions of this subsection shall apply to all violations committed on or after July 1, 2006.
- g. 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.
 - h. 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.
 - i. 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.
- j. 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.
- k. 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.
- l. At the hearing on the petition, the court shall order the petitioner's arrest record, conviction, diversion or deferred judgment 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.
- m. When the court has ordered an arrest record, conviction, diversion or deferred judgment 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, diversion or deferred judgment. If the case was appealed from Municipal Court, a motion to expunge the arrest, conviction, diversion or deferred judgment shall be filed with the District Court. The District Court Clerk shall send a certified copy of the order of expungement to the Municipal Court. 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, diversion or deferred judgment. The Municipal Court shall order the case expunged once the certified copy of the order of expungement is received. 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, diversion or deferred judgment occurred if asked about previous arrests, convictions, diversions or deferred judgments:
 - A. In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant

to K.S.A. 75-7b21, and amendments thereto; or 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 Kansas Department for Aging and Disability Services:

- 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
- K. 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, diversion or deferred judgment 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.

- L. To aid in determining the petitioner's qualifications for a license to act on a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 50-6, 141 and amendments thereto.
- M. The Court, in the order of expungement, may specify other circumstances under which the arrest, conviction, diversion or deferred judgment to be disclosed.
- n. Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such 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 or deferred judgment, the person shall be informed of the ability to expunge the diversion or deferred judgment.
- o. Subject to the disclosures required in 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, diversion or deferred judgment if an offense has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such offense.
- p. The conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such prior conviction of the type expunged. Whenever the record of any arrest, conviction, diversion or deferred judgment 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 or deferred judgment 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 for 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 Kansas Department of 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 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:
 - A. Carry a concealed weapon pursuant to the Personal and Family Protection Act; or
 - B. Act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09 and K.S.A. 50-6, 141 and amendments thereto.
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 12. The original of Section 13 of Charter Ordinance 224 is hereby amended to read as follows:

“Expungement of Arrest Records.

- a. Any person who has been arrested on a violation of a City ordinance of the City of Wichita 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. When a petition for expungement is filed, the official court file shall be separated from the other records of the court and shall be disclosed only to the judge of the court and members of the staff of the court designed by the judge, the prosecuting attorney, the arresting law enforcement agency and other persons when authorized by a court order subject to any conditions imposed by the order. The petition shall state:
 1. The petitioner’s full name;
 2. The full name of the petitioner at the time of arrest, if different from 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 shall prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section, except that no fee shall be charged to a person who was arrested as a result of a victim of identity theft under K.S.A. 21-4108 prior to its repeal or K.S.A. 21-6107 and amendments thereto. 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 arrest was for a violation of any ordinance that is prohibited by either K.S.A. 12-16,124(a) or (b) and amendments thereto and which was adopted prior to July 1, 2014; or
5. 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)(5), 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 Kansas Department of Aging and Disability 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 13. The originals of Sections 3, 8, 12 and 13 of Charter Ordinance 224 and Charter Ordinance 229 of the Code of the City of Wichita are hereby repealed.

SECTION 14. This ordinance shall be published once a week for two consecutive weeks in the official city newspaper.

SECTION 15. This is a charter ordinance and shall take effect sixty-one (61) days after final publication, unless a sufficient petition for a referendum is filed requiring a referendum to be held on the ordinance as provided in Article 12, Section 5, Subsection (c)(3) of the Constitution of the State of Kansas in which case the ordinance shall become effective if approved by a majority of the election voting thereon.

PASSED by the governing body, not less than two-thirds of the members elect voting in favor thereof this 22nd day of September, 2020.

Brandon Whipple, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Jennifer L. Magaña
City Attorney and Director of Law