

Chapter 5.90
MERCHANT OR PRIVATE POLICE

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Cross References: Police department, TMC 2.25.230; law enforcement, Chapter 2.120 TMC.

Article I. Generally

5.90.010 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, but shall not include 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
- (b) any other offense that is a felony or misdemeanor and that, by its nature, involved a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

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

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

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

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

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

establishments. (Ord. 18137 § 2, 12-2-03; Ord. 16911 § 1, 2-6-96; Code 1981 § 34-167. Code 1995 § 30-396.)

Cross References: Definitions generally, TMC 1.10.020.

5.90.020 Uniforms.

Uniforms, if any, worn by employees, agents or guards of private security firms while employed within the city shall not be the same color nor sufficiently similar in appearance that a reasonable person could confuse them with uniforms worn by officers of the police department or any other law enforcement agency authorized by the state of Kansas to operate within the city of Topeka. (Ord. 18137 § 3, 12-2-03; Code 1981 § 34-168. Code 1995 § 30-397.)

5.90.030 Vehicles.

The vehicles used in the conduct of business of the private security firm within the city shall not be the same color nor sufficiently similar in appearance that a reasonable person could confuse them with vehicles used by the uniform patrol division of any law enforcement agency authorized by the state of Kansas to operate within the city of Topeka. Once determined, the color and appearance of such vehicles shall not be changed except by mutual agreement between the chief of police and the private security firm. In the event the private security firm and the chief of police cannot agree, the matter will be submitted to the city manager, whose decision shall be binding on the chief of police and private security firm. While such vehicles may be equipped with red and/or blue emergency lights or sirens, it shall be unlawful to operate such lights or sirens on the streets and highways inside the city limits while the vehicle is in motion. Additionally, no insignias shall be affixed to the sides thereof which are similar in appearance to or which a reasonable person could confuse with that affixed to the sides of the vehicles used by the city. (Ord. 19370 § 20, 3-23-10. Code 1995 § 30-398.)

State Law References: Vehicle to be registered in the state, K.S.A. 12-1679.

5.90.040 Use of words “police officer” in advertising, upon premises or equipment.

The words “police officer” shall not be used in any advertising or upon the premises within the limits of the city and county occupied by the private security firm, nor on any of its vehicles or equipment. (Ord. 18137 § 6, 12-2-03; Code 1981 § 34-171. Code 1995 § 30-400.)

5.90.060 Change in personnel.

(a) Whenever the employment of an employee, agent or guard of a private security firm ceases for any reason, the employer shall immediately notify the chief of police of the cessation of employment on a form supplied by the police department. The employer is in violation of this requirement if notice is not provided within five business days of the last day of employment.

(b) When the employment of an agent or employee of a private security guard or patrol firm ceases, he or she shall forthwith surrender his or her identification card to the employer, who shall forward such card to the chief of police. If the person surrendering the identification card is reemployed during the remainder of the license period, the identification card may be reissued with only a charge for a new identification card.

(c) It shall be unlawful for employees, agents, guards or licensees to fail or refuse to surrender identification cards of employees whose employment has ceased to the chief of police within five business days after the date of cessation of employment. (Ord. 18137 § 8, 12-2-03; Code 1981 § 34-173. Code 1995 § 30-402.)

5.90.070 Changing place of business.

Any licensee under this chapter changing place of business or abode shall immediately notify the chief of police of such fact, together with the address and telephone number of the new place of business or abode. Changes in the place of business or abode shall not be deemed to be a transfer of license or to require the payment of any additional fees except for the fee for a replacement identification card or license when required. (Ord. 18137 § 9, 12-2-03; Code 1981 § 34-174. Code 1995 § 30-403.)

5.90.080 Vehicle information.

Whenever a new vehicle is acquired by a licensee under this chapter for use in the conduct of business, the type and description of such vehicle shall be immediately reported to the chief of police. (Code 1981 § 34-175. Code 1995 § 30-404.)

5.90.090 Interference or obstruction of justice.

It shall be unlawful for any licensee under this chapter to:

- (a) Hinder or interfere with any investigation under the jurisdiction of the police department.
- (b) Fail to report immediately to the police department any violations of city, state or federal laws which constitute felonies or breach of the peace coming to the licensee's attention; provided, this subsection shall not apply to those violations coming to the attention of the licensee while on the client's business for which the client does not wish to pursue.
- (c) Fail to notify the police department of any arrests and to fail to turn such arrested person over to the police department; provided, that the licensee, upon refusal of the police department to take custody of the subject, may turn the individual over to any competent law enforcement agency.
- (d) Represent himself to be an officer of the police department.
- (e) Willfully suppress facts that pertain to any violation of city, state or federal laws under investigation by the police department. (Code 1981 § 34-176. Code 1995 § 30-405.)

Article II. License

Cross References: License fee for merchant guard or merchant patrol, TMC
5.10.160.

5.90.100 Required.

- (a) It shall be unlawful for any person to engage in or conduct a private security business without obtaining a license as provided in this article.
- (b) It shall be unlawful for any private security firm to allow any person to perform work as an employee, agent, or guard unless the person has obtained a license as provided in this article.
- (c) It shall be unlawful for any person to perform work as an employee, agent or guard of a private security firm without obtaining a license as provided in this article.
- (d) This article is intended to be in addition to all other permits or licenses vested in persons by the state, county or city, and it shall not be a defense to the failure to secure a license to protect or preserve the peace of one or more establishments that the person had such other authority.
- (e) The following persons shall not be deemed to be private security guards and shall not be required to obtain a license to act as a private security guard:
 - (1) Persons employed exclusively and regularly by one employer in connection only with the affairs of such employer, where there exists an employer-employee relationship, and where the operation is conducted solely and completely on the property of the employer.
 - (2) Any officer or employee of the United States, of this state, or of a political subdivision thereof, while engaged in the performance of the office or the employee's official duties.
 - (3) State-certified law enforcement officers as defined in K.S.A. 74-5602 et seq., and amendments thereto.

(4) Any person who holds a valid commission as an officer of the Topeka, Kansas, police reserves or any person who holds a valid commission as an officer of the Shawnee County sheriff's office reserve and who has successfully completed training as a reserve officer, except such persons shall not be exempt from the fee requirements of TMC 5.10.160.

(5) Private detectives licensed in the state pursuant to K.S.A. 75-7b01, and amendments thereto. (Ord. 19654 § 1, 10-11-11.)

5.90.110 Application.

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

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

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

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

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

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

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

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

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

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

(1) A statement as to whether or not the applicant has been convicted of any of the crimes identified in TMC Section 5.90.140(a) within the time periods prescribed in that section;

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

(3) A statement as to the business or employment records of such applicant for the three years immediately preceding the date of application. (Ord. 19766 § 3, 10-2-12.)

5.90.120 Temporary license permit.

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

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

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

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

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

(b) The temporary license issued under this section shall be effective for a period of up to 60 days and shall be subject to suspension or revocation for the same reasons as business licenses and employee, agent or guard licenses. A temporary license issued under this section may be extended for not more than two additional 60-day periods at the discretion of the chief of police. An application for a temporary license permit shall be accepted or rejected by the police department within one working day of the time it is submitted. (Ord. 18137 § 12, 12-2-03; Code 1981 § 34-190. Code 1995 § 30-418.)

5.90.130 Licensing procedure – Appeals.

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

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

(c) If the chief of police denies the application for a license under this chapter, the chief of police shall promptly notify the applicant of the action. Within 10 days after receiving notice from the chief of police that his or her application for a private security guard license has been disapproved or denied, the applicant may appeal in writing to the council for a hearing on the matter. The issue in any appeal from a denial pursuant to TMC 5.90.140(a) shall be limited to determining whether the facts supporting the disapproval or denial of the license are correct. (Ord. 18137 § 14, 12-2-03; Ord. 17697 § 1, 7-10-01; Ord. 16841 § 1, 6-27-95; Code 1981 § 34-192. Code 1995 § 30-420.)

Cross References: City council – mayor, Chapter 2.15 TMC; city attorney, TMC 2.25.120.

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

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

(1) Any person under 18 years of age;

(2) Any person convicted of a felony;

(3) Any person convicted 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) 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.

(5) Any person against whom a judgment for fraud, deceit or misrepresentation has been entered within 10 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.

(b) It shall be unlawful for any person holding a license or temporary license to fail to report to their employer, or for any employer to fail to report to the chief of police within five business days, any judgment or conviction for an act set forth in subsection (a) of this section that constitutes a reason for denial or an application or suspension or revocation of a license.

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

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

(e) Any person or firm that has their license suspended or revoked by the chief of police may appeal the decision to the governing body by filing a written notice of appeal with the city clerk within 10 days of receipt of the order suspending or revoking the license. If a timely appeal is filed, the governing body shall hold a hearing and the person or firm appealing may present any evidence and be heard with respect to the allegations that resulted in suspension or revocation by the chief of police. The licensee may, concurrently with appeal of the suspension or revocation, request in writing that imposition of suspension or revocation be stayed pending the outcome of the appeal. If both the notice of appeal and request for stay are timely filed with the city clerk, imposition of the suspension or revocation shall automatically be stayed, pending the

outcome of the appeal. The governing body shall either affirm or reverse the suspension or revocation, or remand the matter to the chief of police for further proceedings.

(f) The chief of police, with the approval of the city attorney, may use emergency proceedings to suspend a license in any situation involving an immediate danger to the public health, safety or welfare requiring immediate action. The chief of police may take only such action as is necessary to prevent or avoid the immediate danger to the public health, safety or welfare that justifies use of emergency adjudication. The chief of police shall render an order, including a brief statement of findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of chief of police's discretion, to justify his or her decision to take the specific action and the determination of an immediate danger. The chief of police shall give such notice as 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. (Ord. 18137 § 15, 12-2-03; Ord. 17697 § 2, 7-10-01; Code 1981 § 34-193. Code 1995 § 30-421.)

Cross References: City council – mayor, Chapter 2.15 TMC; city clerk, TMC 2.25.110; city attorney, TMC 2.25.120.

5.90.150 Insurance.

(a) All private security firms shall carry insurance for the purpose of indemnifying third persons for bodily injury, in amounts not less than \$200,000 for each bodily injury and \$500,000 aggregate limit; and further, to indemnify third persons for any damage to property as the result of the actions of the private security firm's employee, agent, or guard in an amount of not less than \$100,000 per claimant and \$300,000 aggregate limit. Evidence of such coverage shall be provided to the chief of police, and it shall be the private security firm's responsibility to assure that either the private security firm or its insurance carrier has notified the chief of police of any lapse or cancellation in coverage within 10 days of notification to the insured.

(b) Failure to carry the required insurance or to notify the chief of police of any lapse or cancellation of coverage within 10 days of notification to the insured shall be unlawful. (Ord. 18137 § 16, 12-2-03; Code 1981 § 34-194. Code 1995 § 30-422.)

5.90.160 Issuance.

The chief of police shall issue a license to each private security firm upon approval of the application and the filing of insurance as provided in TMC 5.90.150. (Ord. 18137 § 17, 12-2-03; Code 1981 § 34-195. Code 1995 § 30-423.)

5.90.170 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
- (5) Such other information as the chief of police may deem advisable.

(b) The chief of police is hereby authorized to collect from each applicant the sum of \$10.00 for each new or replacement identification card or license issued. (Ord. 18137 § 18, 12-2-03; Ord. 18127 § 2, 11-18-03; Code 1981 § 34-196. Code 1995 § 30-424.)

5.90.180 Transfer.

Any change in ownership by a licensee under this article shall require a new application and license. (Code 1981 § 34-197. Code 1995 § 30-425.)

5.90.190 Renewal.

(a) The failure to have a license renewed under this article by the day of expiration shall require a new application and fee as if the applicant had never held a license.

(b) The chief of police is authorized to promulgate necessary rules and regulations concerning the renewal of licenses under this article. The rules and regulations so promulgated shall be with the approval of the city attorney. (Code 1981 § 34-198. Code 1995 § 30-426.)

Cross References: City attorney, TMC 2.25.120.

5.90.200 Rules and regulations authority.

The chief of police, with the approval of the city attorney's office, is authorized to promulgate all necessary rules and regulations he or she deems necessary to carry out the provisions of this chapter. (Ord. 18137 § 20, 12-2-03. Code 1995 § 30-428.)

Cross References: City attorney, TMC 2.25.120.

**The Topeka Municipal Code is current through
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City Website: <http://www.topeka.org/>

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