ORDINANCE NO. 18234

AN ORDINANCE introduced by Mayor James A. McClinton relating to the wearing of gas masks, bulletproof vests, improvised body armor or masks or devices to conceal one's identity during unlawful activities and amending City of Topeka Code Chapter 54, Article IV and repealing the original section.

WHEREAS, in recent years, civil unrest and disturbance have occurred at events in many cities, accompanied in some instances by significant personal injuries and property damage; and

WHEREAS, some persons causing such civil unrest have resisted police crowd control and identification efforts by the wearing of gas masks or other devices to conceal their identities; and

WHEREAS, courts have recognized the right of jurisdictions to enact reasonable time, place and manner restrictions related to parades, demonstrations, rallies and assemblies while not restricting the First Amendment rights of groups and individuals wishing to express their views by such demonstrations, rallies and assemblies; and

WHEREAS, the City of Topeka wishes to ensure the safety and security of those viewing, attending, or participating in parades and assemblies, the residents and businesses, and the public officials and employees responsible for handling or overseeing such events on public property in the City of Topeka to reduce or avoid the possibility of personal injury and property damage; and

WHEREAS, the City of Topeka recognizes the First Amendment rights of those wishing to express their views, both individually and collectively, on issues addressed at or
in future parades, protests, demonstrations, rallies; and

WHEREAS, it is appropriate for the City Council to enact regulations relating to such
events to ensure the safety and well-being of individuals and property and to identify and
apprehend those causing personal injury or property damage, while ensuring the First
Amendment rights of those wishing to peacefully associate and to express their views, both
individually and collectively; and

WHEREAS, it is the purpose and intent of the City of Topeka, in enacting the
regulations set forth in Section 2 of this Ordinance, to establish reasonable time, place and
manner restrictions for parades and assemblies to ensure the safety and well-being of
individuals and property and to identify and apprehend those causing personal injury or
property damage, while at the same time ensuring the First Amendment rights of those
wishing to associate and to express their views, both individually and collectively; and

WHEREAS, in enacting these regulations, the City of Topeka is cognizant of recent
court decisions that authorize the enactment of reasonable time, place and manner
restrictions, and the City of Topeka is also cognizant of its obligation not to improperly
restrict the First Amendment rights of individuals and groups wishing to associate and to
express their First Amendment views on any and all issues, and to do so in a robust,
vigorous manner; and

WHEREAS, the regulations in Section 2 of this Ordinance reasonably restrict only
the time, place and manner of those participating in parades, demonstrations, rallies and
assemblies and do not interfere with their rights of association and expression; and

WHEREAS, the items or devices restricted or prohibited by Section 2 of this
Ordinance have the potential to thwart reasonable police crowd control efforts or obscure
the identities of those engaged in causing personal injury or property damage, and the
materials have been used for this purpose in events in other jurisdictions; and

WHEREAS, no First Amendment right exists to permit personal and property
damage through use of these materials, and it is therefore, reasonable and appropriate to
restrict possession of such materials as a prophylactic, reasonable time, place and manner
regulation; and

WHEREAS, the City Council has determined, that in the best interests of the
citizens of the City of Topeka to adopt such regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
TOPEKA, KANSAS:

Section 1. That City of Topeka Code Chapter 54, Article IV, Offenses Against
Public Safety, is hereby amended by the addition of the following division:

Division 3. Masks, Vests and Body Armor

Section 2. Wearing of Gas Masks, Bulletproof Vests, Improvised Body Armor
or Masks or Devices to Conceal One's Identity During Unlawful Activities Prohibited.

a. It shall be unlawful for any person to carry, possess or wear any of the
following devices during parades, demonstrations, rallies and assemblies:

1. A gas mask or similar device designed to filter all air breathed and that
would protect the respiratory tract and face against chemical irritants commonly
deployed by law enforcement;

2. A bulletproof vest, or other improvised body armor. For the purposes
of this section, the term "bulletproof vest" means a bullet-resistant body armor providing, as a minimum standard, the level of protection known as "threat level I," which shall mean at least seven layers of bullet-resistant material providing protection from three shots of 158-grain lead ammunition fired from a .38 caliber handgun at a velocity of 850 feet per second, and "Improvised body armor" is any gear or attire, made of any material, which is not normal wearing apparel and worn for the purpose of defeating law enforcement tactics to control an unruly person;

3. A mask or other device with the specific intent to hide one's identity during the commission of unlawful activity or with the specific intent to intimidate or threaten another person.

b. The provisions of subsection (a) shall not apply to any federal, state or city law enforcement officer performing their official duties.

Section 3. That original Topeka City Code Chapter 54, Article IV is hereby specifically repealed.

Section 4. This Ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

PASSED and APPROVED by the City Council ___________________________ MAY 11 2004

ATTEST:

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 4/26/04 BY 32 NOT TO BE CODIFIED
TO BE CODIFIED ____________